

Replacement Local Development Plan 2018-2033

Background Paper

BP13: Houses of multiple occupation - briefing note

Deposit Plan

May 2023



Mae'r ddogfen hon ar gael yn Gymraeg hefyd.

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Briefing Note

Our Ref: 65417/01/JCO
Date: 9 May 2023
To: Carol Evans & James Harland
From: Lichfields
Copy:

Subject: **HMO Background Study: Further Research**

1. Introduction

1.1 Lichfields was appointed by Conwy County Borough Council (CCBC) to prepare an evidence base to inform its emerging LDP in respect of the control of Houses in Multiple Occupation (HMO). Recognising that there are various definitions of HMOs and that some are subject to licensing requirements but not planning control, the focus of our review was the HMOs that are defined in Section 254 of the Housing Act 2004 (and subject to planning control), as follows:

- 1 **Small HMOs:** includes shared houses or flats occupied by between three and six unrelated individuals who share basic amenities. In planning terms, this is defined as falling within Use Class C4.
- 2 **Large HMOs:** Properties containing six or more people that share basic amenities. This is a *Sui Generis* use.

1.2 Following a review of our recommendations by the Scrutiny Committee and Cabinet, Lichfields has been instructed to undertake further research in respect of the approach that other local authorities in Wales have been taken in relation to:

- 1 The inclusion of indicators and triggers to monitor the effectiveness of relevant policies in controlling HMO development;
- 2 Whether other LDP policies have set an upper limit on the number of people residing within HMOs; and,

3 The requirement for applicants to submit an HMO Management Plan and what this may entail.

1.3 This note sets out our findings in relation to these matters. Given that our review of Welsh authorities yielded limited results, we extended the parameters to take account of the policy position within a limited number of authorities in England. Although not based on a comprehensive assessment of all local authorities in England, and notwithstanding the different national policy regime that applies, this approach is intended to provide a more comprehensive perspective and basis for a robust assessment of the policy options that are available to CCBC.

1.4 This note sets out the findings of our research and provides advice regarding the policy amendments proposed by Cabinet members. It does not, however, provide any recommendations in respect of potential policy wording in relation to the matters set out above.

1.5 In addition, this note provides an update to our November 2022 report by highlighting the implications of three recently approved HMO conversions in Conwy and exploring the issues arising from the recently issued Hotel Accommodation Zone Study.

2. Indicators and triggers to monitor policy's effectiveness in controlling HMO development

2.1 Our report of November 2022 identified nine LDPs in Wales (in addition to Conwy) that have policies in place to control HMO development¹. Two other local authorities have policies relating to HMO development in their emerging LDPs². Of these LDPs, three also contain specific indicators and triggers to monitor the effectiveness of the policy. Details of these and commentary on their applicability to Conwy are set out in Table 2.1:

Table 1 Indicators and triggers relating to HMO management policies in Wales

Local Planning Authority	Policy Target	Indicator	Trigger	Commentary
Cardiff	To control HMO development & design standards of HMOs / flat conversions	HMO SPG Design Guidance and Standards for Flat Conversions SPG	Failure to adopt SPG within 6 months of Plan adoption	Not applicable to Conwy as no SPG proposed
Denbighshire	Prevent the creation of HMOs	Number of HMOs granted planning permission	One or more HMOs granted planning permission	Not applicable to Conwy as policy intention is not to prevent the creation of HMOs
Swansea	Ensure number of HMOs does not "significantly" exceed 25% total number of dwellings within HMO	Proportion of HMOs within Castle and Upland Wards	Average concentration of HMOs within LSOAs of HMO Management Area either reduces or increases by +/- 2% from the base	A similar approach could be applied to Conwy – see below

¹ Cardiff, Carmarthenshire, Ceredigion, Gwynedd/Anglesey (joint LDP), Newport, Rhondda Cynon Taf, Swansea and Wrexham

² Bridgend and Flintshire. Note that Carmarthenshire also has HMO policies in its emerging LDP as well as its existing LDP

Local Planning Authority	Policy Target	Indicator	Trigger	Commentary
	Management Area		level, which is currently around 25%	

Source: Cardiff LDP, Denbighshire LDP, Swansea LDP

- 2.2 The trigger applied to Policy H9 in the Swansea LDP relates only to the identified HMO Management Areas of the Castle and Uplands Wards. Policy H9 stipulates that proposals for HMO conversions will only be permitted where, among other considerations:
- “Within the HMO Management Area, it would not lead to more than 25% of all residential properties within a 50m radius of the proposal being HMOs.”*
- 2.3 It is noted that there is no monitoring threshold in other areas where a 10% threshold applies.
- 2.4 The identified trigger point is if the average concentration of HMOs within the LSOAs of the HMO Management Areas reduces or increases by 2% from the base level (of c.25%), the same as the threshold set in the policy. Paragraph 4.2.6 of the Swansea LDP is clear that a failure to meet an established target will not necessarily result in the need to review the LDP. Instead:
- “The first course of action would normally include a thorough analysis of the reason or reasons for the failure and a broader assessment of the implications as far as the successful implementation of the Plan is concerned. There will be cases where effective policy implementation will be a key factor in determining how successful the Plan will be in achieving the Strategic Objectives...”*
- 2.5 The Annual Monitoring Report is the identified mechanism by which the LDP will be monitored. Paragraph 4.2.7 states that this “will outline steps that will be taken to address the issues identified and any required

revisions to the Plan to replace or amend the policy.” Potential options available to the Council include:

- 1 Continue monitoring where the indicators suggest that the Plan policies are being implemented effectively and that there is no cause for review;
- 2 Implement office and/or member training where indicators suggest that the Plan Policies are not being implemented in the intended manner;
- 3 Publish additional Supplementary Planning Guidance where indicators suggest that there is a need for additional guidance in addition to that contained within the Plan;
- 4 Undertake further research and investigation, including looking at contextual information about the County or topic area where indicators suggest that the Plan Policies are not being as effective as originally expected;
- 5 Undertake an investigation into why the Plan policies are not being implemented, which may lead to a formal review of the Plan policy/policies where indicators suggest that an individual policy or policies are not being implemented; and,
- 6 Undertake an investigation into why the Plan strategy is not being implemented, which may determine that a formal review of the Plan is required where indicators suggest that the Plan strategy is not being implemented.

Applicability to Conwy RLDP

- 2.6 In the absence of an HMO Management Areas having been identified as part of the policy approach in Conwy County Borough, consideration should be given to whether a similar monitoring approach could be applied. In so doing, consideration should be given to whether the monitoring approach should be applied to all parts of the local authority

area or whether it should be more focused, for example, being limited to specific areas of particular pressure or sensitivity such as the Holiday Accommodation Zone (HAZ). Such an approach would provide CCBC with greater control over HMO development in defined areas whilst providing flexibility in the wider local authority area.

- 2.7 In addition to this, CCBC could monitor the nature of the material considerations deemed significant enough to demonstrably outweigh concerns relating to HMO development were this to occur frequently.
- 2.8 In order to ensure the effective implementation of the proposed policy relating to the control of HMOs across the local authority area, CCBC might prefer to monitor its implementation across all areas. The proposed policy seeks to apply a limit of *“10% of all residential properties within a 50m radius of the proposal being HMOs (rounded to the nearest whole number of dwellings).”* This is similar to the approach applied in Swansea which also applies an upper limit within a 50 metre radius of the proposed HMO. We note, however, that the monitoring framework in Swansea relates to the *“average concentration of HMOs within the LSOAs of HMO Management Areas”*. This is a different spatial scale to that applied within the policy text.
- 2.9 As detailed in Section 5 of our report of November 2022, the proportion of planning HMOs is very limited at a LSOA level. The peak concentration is in LSOA 001B, in Llandudno, where they account for above 1.01% of the total housing stock. In Colwyn Bay, between 0.25% and 0.74% of the total housing stock comprises HMOs. Application of a monitoring target of 10% at a HMO level would therefore not be effective as this level of concentration is most unlikely to be achieved at a LSOA level.
- 2.10 The alternative approach would therefore be to apply the threshold to a small area of a 50 metre radius from the application site, as per the policy text. Application of a monitoring threshold on this basis would create some complexity as it would require the concentration of HMOs to be calculated for multiple (potentially overlapping) areas. Monitoring of the policy could,

however, be undertaken in conjunction with the development management team through the establishment of an alert where the grant of planning permission for a HMO would trigger the monitoring threshold.

2.11 Our November 2022 report recommended that the policies provide some flexibility to permit additional HMOs where it is determined that this would be acceptable when assessed against the identified criteria, even though it might transgress the 10% threshold. In the light of this, and in the event that CCBC was minded to apply a monitoring and potential review trigger to the HMO policy contained within the RLDP, we consider that this should be set at a level that provides for a margin of flexibility. Setting the monitoring trigger at 15%, for example, would ensure for an element of flexibility were planning applications for changes of use to be granted as a result of material considerations demonstrably outweighing concerns relating to HMO development. As set out above, we would recommend that the monitoring should take account of a 50 metre radius of any “planning” HMO but that the focus would be where additional provision results in the threshold being breached. Any cases where HMOs already account for more than 15% of residential properties would not constitute a trigger unless additional new HMOs were permitted within that area.

2.12 In the event that CCBC does implement a monitoring approach to its HMO policies, it should give careful regard to the actions that would be taken in the event that the trigger is enacted. It is unlikely that a review of the policy or LDP would be appropriate unless there is evidence of substantial harm arising from a significant over-concentration of HMOs in any particular area.

3. Upper limit on the number of people residing within HMOs

3.1 There are no (existing or proposed) LDPs in Wales with policies in place that control the number of bedrooms that are to be provided within HMOs. A review of the approach undertaken by authorities in England has also not identified any examples of local plan policies that restrict the number of bedrooms that are to be provided in HMOs.

- 3.2 Furthermore, there are also no (existing or proposed) LDPs in Wales with policies in place that set an upper limit on the number of people residing within HMOs. It is understood that this is a matter that is more commonly the subject to licence restrictions. A review of the register of HMO Licences in Bridgend, Caerphilly, Cardiff, Ceredigion, Denbighshire, Flintshire, Merthyr Tydfil, Neath Port Talbot, Newport, Powys, Swansea, Torfaen, Vale of Glamorgan and Wrexham has shown that all contain limits on the number of occupants³. These occupancy restrictions are based on the size of the dwellings and are generally based on the number of bedrooms within the property – but the number of bedrooms to be provided is not subject to any control.
- 3.3 In spite of the clear evidence of occupancy restrictions, the licencing guidance issued by local authorities in Wales generally does not refer to this issue. The following examples taken from English authorities provide evidence of guidance that has been issued in respect of occupancy restrictions.

Table 2 Restrictions on HMO occupancy in England

Local authority	Occupancy restriction
LB Redbridge	<p><i>"A maximum of two people are permitted to share a room for sleeping irrespective of age. If there are two occupiers, they must be living together as partners, family members or consenting friends. A room shared by more than two people is overcrowded and may be subject to enforcement action by the Council.</i></p> <p><i>"A room used for sleeping must not be shared by people of the opposite sex who are 10 and over, unless they are married or living together as husband and wife. When measuring the size of the room and assessing usable space, the shape of the room should be considered as well as the total floor area."</i> (HMO Guidance, paragraphs 5.11-5.12)</p>
Hinckely and Bosworth	<p><i>"No more than two people must sleep in the same room, irrespective of age"</i></p>

³ Access to the licences register for Blaenau Gwent, Gwynedd, Monmouthshire and Pembrokeshire are only available upon request.

Local authority	Occupancy restriction
	<p><i>"Rooms must not be shared, unless the individuals concerned consent to share the room (e.g. couples). The room must be large enough to allow this (see below)."</i></p> <p>The guidance also sets minimum size bedrooms, dependent on the number of occupants:</p> <ul style="list-style-type: none"> - 6.52 sqm for a single person; and, - 10.23 sqm if occupied by two people.

Source: <https://www.redbridge.gov.uk/housing/private-rentals/guidance-on-hmo-standards/>
https://www.hinckley-bosworth.gov.uk/info/898/house_in_multiple_occupation_hmo/244/house_in_multiple_occupation_hmo_-_licence_fees_and_rules/2

Applicability to Conwy RLDP

- 3.4 Critically, the examples of restrictions on the number of people residing within HMOs set out above are not taken from planning policy but instead relate to HMO licencing restrictions. We have not identified any examples of planning policies that have sought to achieve this objective. This highlights the importance of joint working between the planning and housing teams within any local authority.
- 3.5 We would be concerned that using LDP policies to seek to apply restrictions on the number of people is untested in Wales (and England) and that it would be likely to result in an overlap with licensing controls. As a result, we would have concerns about the soundness of any such policy, particularly in respect of the test of appropriateness of any plan or policy.
- 3.6 Our review of CCBC's online HMO Licence Register has not indicated whether specific HMO properties are subject to occupancy restrictions. However, this would appear to be the most appropriate mechanism by which such controls might be put in place. If necessary, consideration might be given to changes in the licencing regime.
- 3.7 Given the lack of evidence of any controls on the number of bedrooms within HMOs elsewhere, we would further advise that CCBC does not seek to apply any such restrictions as such a policy approach is likely to be difficult to justify and implement.

4. HMO Management Plan

4.1 None of the local authorities in Wales with planning policies in place to manage HMO development require applicants to submit HMO Management Plans alongside planning applications to change the use of a dwelling to an HMO, or in order to obtain a licence. A limited review of the approach undertaken by authorities in England has identified LB Redbridge as requiring landlords applying for a change of use to a Building in Multiple Residential Occupation (BMRO – equivalent to a large HMO as defined in paragraph 1.1 above) to submit a management plan.

4.2 Paragraph 3.12 of the supporting text to Policy LP6 in the Redbridge Local Plan states that:

“Proposals for BMRO should provide a management plan. The effective management of a BMRO can significantly reduce the negative impacts on amenity of neighbouring properties and improve the quality of living for occupants. The management plan could address issues related to waste and recycling collection, management of communal areas (both internal and external), appropriate health and safety checks and management of excessive noise.”

4.3 Pursuant to the adoption of the Redbridge Local Plan, two management plans have been submitted to the Council. Details of these are provided below:

Table 3 Details of applications where HMO Management Plans have been submitted to LB Redbridge

Application reference/proposal	Address	Decision date	Matters addressed by management plan
2644/18/01 HMO Management Plan (Condition 2)	356 Thorold Road, Ilford, IGI 4HF	16/08/2019	Waste storage and disposal General maintenance of the property
4872/17/01 HMO Management Plan (Condition 3)	35 Mortlake Road, Ilford, IGI 2SX	12/11/2018	Requirement for letting agent to find and secure tenants

Application reference/proposal	Address	Decision date	Matters addressed by management plan
			Requirement for regular inspection of property by landlord or appointed agent Refuse management Maintenance of internal and external communal areas

Source: Redbridge Borough Council Planning Portal

- 4.4 By way of further context to this policy, it should be noted that the implementation part of Policy LP6 states:

“3. In accordance with the Redbridge Corporate Strategy 2014-2018, the Council will seek to implement a property licensing scheme to improve the quality of private rented accommodation and address anti-social behaviour.”

- 4.5 It is understood that a licencing scheme is now in place in LB Redbridge but this was not the case at the time of preparation, examination and adoption of the Local Plan. The absence of a licencing scheme at that time would have justified the inclusion of the requirement for management plans as part of Policy LP6.

Applicability to Conwy RLDP

- 4.6 There is very limited evidence of HMO Management Plans being required by planning policy, with no examples in Wales and only one local authority in England adopting such an approach⁴. CCBC should give consideration as to why this is the case and whether there is sufficient justification to adopt a divergent position. As set out above, the context to the requirement for the preparation of management plans in LB Redbridge is very different to the situation in Conwy County Borough where a licencing scheme is already in place.

⁴ Although note that this was not based on a comprehensive review of all authorities in England

- 4.7 Prospective landlords in Wales are legally required to register with RentSmart Wales⁵ and undergo a mandatory training programme certified by Welsh Government. A large element of this regime relates to the management of the property. As a result, it is reasonable to expect that landlords would be aware of their duties to tenants with regards to managing their properties.
- 4.8 In addition, the requirements of HMO licences cover a range of matters such as refuse; fire precautions; services, goods and appliances; amenities; maintenance; and noise and anti-social behaviour. There is a clear risk of overlap between these matters and those addressed by an HMO Management Plans. As with the restrictions on the number of tenants within an HMO, we would therefore have concerns that any attempts to control this matter through LDP policy would serve only to duplicate existing controls. Such an approach would again be untested in Wales and would raise concerns in respect of the soundness of any such policy, particularly in respect of the test of appropriateness of any plan or policy.
- 4.9 Were CCBC to adopt this approach, further consultation with landlords may be recommended given the concerns raised in previous workshops regarding the increased cost of managing HMOs as a result of stronger standard regulation.

5. Update on HMO provision in Conwy

The role of HMOs in supporting employment in key sectors

- 5.1 Section 5 of the HMO Background Study included an overview of recent planning applications and appeals relating to HMOs in Conwy. It showed that three of the seven planning applications identified related to the proposed change of use of a dwelling to an HMO. All three applications were refused by delegated powers although two of these were subsequently allowed at appeal.

⁵ <https://rentsmart.gov.wales/en/home/>

- 5.2 By way of update, it is noted that three applications – submitted by Adra the housing association – for the change of use of a residential dwelling to an HMO were approved by CCBC in April 2023⁶. The three properties were located in close proximity to one another in an area that has a very low existing level of HMO provision. Of particular importance in relation to the consideration of these proposals was the fact that all three were designed to provide accommodation for international NHS health workers. It was acknowledged in the consultation response from CCBC Housing Strategy that the proposals could provide an alternative approach to meeting identified need, recognising that there is a high demand for smaller accommodation in the local area. A supporting statement prepared by the Local Health Board expressed concern about the UK shortage of health workers which was necessitating international recruitment. It stated that *“appropriate accommodation for nurses and other key workers migrating to North Wales to live and work is imperative in order to encourage them to stay within the area and the organisation.”*
- 5.3 These examples underline the important role that HMOs can play in providing suitable accommodation for people that work in the local area, that might not be able to compete in the open market, and that might not be eligible for affordable housing. The recently approved HMOs will be important in ensuring that the NHS can attract and retain staff, noting that *“securing appropriate accommodation in an area close to our Hospital site is an area of greatest challenge”* (supporting statement prepared by Local Health Board). Each permission was subject to a condition restricting their occupation to health board staff and otherwise requiring the properties to return to C3 use.
- 5.4 Although working in a different LDP context, the neighbouring local authority area of Gwynedd has adopted a similar approach in relation to the provision of HMOs to provide accommodation for tourism workers. Recognising the importance of tourism sector within North Wales, the

⁶ LPA references 0/50513, 0/50514, 0/50516

provision of suitable accommodation for such workers is essential to supporting the local economy.

- 5.5 We would recommend that the supporting text to the proposed policy includes reference to the contribution that HMOs can make to the local economy by ensuring an adequate supply of suitable workers. This should not override other policy considerations relating to the potential impact of the property on the local area but should be given weight in the planning balance.

Control on HMOs within the Holiday Accommodation Zone

- 5.6 Despite the recognition above that HMOs can play an important role in providing safe and affordable accommodation for those working in key sectors, including tourism, the Holiday Accommodation Zone Study expressed concern that the change of use of existing properties to HMOs within the Llandudno Holiday Accommodation Zone (HAZ) could have an adverse impact on the amenity of tourist accommodation and undermine the serviced accommodation sector.
- 5.7 The HAZ is relatively modest in size and there are currently only three HMOs within it, together with a further five HMOs located on the immediate HAZ boundary. This suggests that it is not an area within which there is a particularly high level of demand for new HMOs and so a restriction on the future creation of new HMOs within this area is unlikely to have an adverse impact on the stock of such properties.
- 5.8 We therefore recommend that the proposed HMO policy includes a specific restriction of the creation of new HMOs within the HAZ. Consideration should also be given to restricting HMOs within a defined buffer zone around the HAZ. For the avoidance of doubt, however, this restriction should not affect the continued operation of existing HMOs within the HAZ.