Friendly Housing Action Briefing Paper – Jan 2011
HMO Legislation & Fully Mutual Housing Co-ops

January 2011

Background

Housing Co-operatives
Housing co-operatives have been around for a long time and are generally recognised as successful providers of affordable, tenant-controlled accommodation. However, they receive relatively little recognition from government. Consequently, whilst some housing co-ops are Registered Social Landlords and, broadly speaking, come under the same regime as Housing Associations, those that are not are classified as private sector landlords even though they are, by definition, not-for-profit organisations.

Housing co-ops come in different shapes and sizes. Friendly Housing Action represents small co-ops, which typically own just one or two houses providing shared accommodation and are "fully mutual" and "managed by general meeting". In simple terms, the co-op membership is made up entirely of tenants, and all members regularly attend meetings and carry out the necessary management needed to run the co-op. This means that the individual members of these housing co-ops collectively take responsibility for the house their role in the neighbourhood they are living in - and for one another.

Houses in Multiple Occupation
A house in multiple occupation (HMO) is defined by the Housing Act 2004 as a property where tenants rent rooms, but share "amenities", i.e. kitchen and bathroom facilities. This type of accommodation often houses students, unemployed and low-waged single people and other groups with limited economic power. These people are most vulnerable to exploitation by landlords in terms of potential overcrowding, provision of sub-standard facilities, etc.

HMO Licensing

The licensing regime in the Housing Act 2004 requires private sector landlords to apply to the local authority for a licence prior to renting out HMO accommodation. Local authorities charge landlords a fee for the application. In order to obtain the licence, landlords have to comply with health and safety legislation, which make a "worst case" assumption about the relationships between and responsibilities taken on by tenants, as well as proving to the local authority that there are sufficient amenities in the building.

In a fully mutual housing co-op, residents are responsible to the co-op - and hence to one another - for all aspects of the house in which they live - from keeping accounts through to building maintenance, and domestic arrangements for things such as food and cleaning. New members are typically admitted only with the agreement of existing members and are required to accept the rules of the co-op on joining.

In a typical HMO run by a private landlord, the landlord takes on all the responsibility for building maintenance etc., and involvement of local authority enforcement for disrepair is not uncommon. New tenants are often chosen by the landlord or letting agent and imposed upon those who already live in the house. Domestic arrangements are often unsatisfactory, with no structure in place for residents to discuss and decide things and relationships often break down or are non-existent in the first place. HMO tenants typicallycook meals separately for example. As the kitchen is one of the major sources of house fires, this greatly increases fire risk compared to single-family occupation and fully mutual housing co-ops.

HMO licensing is costly, but it protects vulnerable tenants from potential exploitation by landlords. However in a fully mutual housing co-op governed by general meeting, the tenants themselves are in control of the building - each member is in effect both tenant and landlord (via their co-op, of which they legally own a share). It is patently nonsense that members of housing co-ops must spend large amounts implementing health and safety measures in their own homes which are unnecessary to them, and pay registration fees to the local authority so they can be protected from themselves.

HMOs and Planning

A high concentration of HMOs in an area can cause problems, as is most often seen in student neighbourhoods in university towns (e.g. Manchester, Leeds, Swansea), where many tenants are living away from home for the first time and/or have not created any longer-term connections with the community. In some cases they are still in the process of picking up practical life skills. Having a high density of such occupants tends to create problems with rubbish disposal, litter, late-night noise, etc. Homes left empty outside term-time create a "dormitory town" effect which is disturbing for the remaining long-term residents of the area.

These problems have been recognised for some time - indeed, anti-HMO lobby groups anticipated that they would be addressed by the licensing scheme which was introduced in the Housing Act 2004. However, this opportunity was missed - HMO licensing is only concerned with the properties themselves: the relationship between the occupants and the neighbourhood is not addressed.

To address this unresolved issue, the Use Classes Amendment Order 2010 was rushed through parliament before the general election by the outgoing government. It creates the new C4 planning use class for small private-sector HMOs of up to 6 occupants, but not Registered Social Landlords, taking such properties out of use class C3. This means that private-sector landlords who want to use a property previously occupied by a family (C3) as an HMO (C4) must apply for planning permission for a change of use.

The Coalition Government was quick to realise that this would create a huge amount of additional work for planning authorities up and down the country, on an issue confined to specific neighbourhoods in certain cities and towns. Whilst the C4 use class will remain, change of use from C3 to C4 will normally be a permitted development right, ie something for which planning consent does not have to be requested. However the local planning authority can remove this right in designated areas. This would enable local authorities to control the number of HMOs through the planning process, but only in the particular areas where they deem it necessary.

Effect on FMHCs
Creating a requirement to apply for planning consent for a change of use presents a significant problem for any new housing co-op attempting to set up shared accommodation.

One of the fundamental elements of the planning process is that the local authority can exercise discretion in allowing a house to be used for a particular purpose or not. Therefore, in an area where change of use would be required, the purchaser of the house cannot know in advance whether planning consent will be granted. In contrast to commercial property market norms, it is unlikely (particularly in a difficult economic climate) that the vendor of a residential property would be willing or able to wait for the results of a co-op's planning application before selling. This means that the housing co-op would have to take a risk by buying the property without knowing for sure that they will be able to use it. A private sector landlord, who makes a profit

from property, may well decide that this risk is worth taking - across a portfolio, profits on houses that are successfully run as HMOs will likely more than cover losses on any for which planning permission is not granted.

A housing co-op, by definition a not-for-profit entity, cannot afford to take such a risk. The process of buying a property is both time-consuming and costly, involving solicitor's, surveyor's and mortgage arrangement fees and Stamp Duty Land Tax. And of course selling a property also incurs further costs in terms of estate agent's and solicitor's fees. Housing co-ops can only afford to bear these costs when they are covered by several years' rental income; having to sell a house straight after buying it, because planning consent could not be granted, would be financially disastrous.

So housing co-ops face huge barriers to setting up in any areas designated as having high HMO concentrations. Yet Friendly Housing Action believes that communities where currently a significant proportion of properties are controlled by private landlords would benefit greatly from new housing co-operatives. Since the Use Class Amendment order uses the excemptions for HMOs in the 2004 Housing Act, this makes the task of amending the Act all the more pressing.

Difference between FMHCs and HMOs
The introduction of a separate use class for HMOs has been largely justified by the difficulties caused by HMOs within local neighbourhoods, and the resulting friction between HMO occupants and long-term residents of the area. However, housing co-ops demonstrate solutions to this issue.

Tenancy lengths in a housing co-op are usually much longer than the 6-12 month lets typical in private sector HMOs. Housing co-op residents are far less transient than tenants housed on annual lets in HMOs. In addition, new co-op residents will move in with longer term co-op members who will introduce them to procedures and systems developed over time and tell them about the neighbourhood, rather than the wholesale changeover of HMO tenants which occurs in some areas.

In fact, the impact of individuals only living in the house for a short period of time is to some extent neutralised because the housing co-op has an identity of its own, which goes above and beyond that of the particular individuals living there at any time. New members joining the co-op pick up and build upon the work done by their predecessors; the housing co-op itself behaves like a long-term resident of the neighbourhood.

Proposal: an exemption for FMHCs managed by General Meeting

The Housing Act 2004 actually contains a number of exemptions to the definition of HMO - including where the majority of residents own a share of the freehold or long leasehold to the property. This presumably exists to reflect the vastly different risks when the occupants have responsibilities by virtue of their ownership. However this exemption does not apply to housing co-ops where the members own the house indirectly, via the entity of the co-op, rather than directly. Friendly Housing Action would like to see an exemption to the definition of an HMO that incorporates fully mutual housing co-ops managed by general meeting which own or manage their own property. This would be consistent with the owner-occupier exemption, and the exemption for fully mutual co-ops that has already been passed into Scottish law under the equivalent act in Scotland.

We propose that the Localism Bill currently starting to progress through Parliament be used to amend the 2004 Act. It already does this is a number of ways, so this should not problematic.

Specifically, it should add an exemption clause like that contained in the Scottish Housing Act 2006 to Schedule 14 part 6.

The Government has said in the Coalition Programme for Government and elsewhere that it wishes to encourage co-operative ventures. The International Co-operative Alliance quotes Grant Shapps MP, Minister of State for Housing and Planning, as saying "It is clear that innovative schemes like housing co-ops are really important in the current climate". Yet the Use Classes Amendment Order and HMO licencing unwittingly introduce another barrier to the creation of new housing co-ops. Classifying FMHCs managed by General Meeting as identical to private sector HMOs is not only inappropriate, but actually counter-productive, as co-operatives provide other solutions to the problems which the HMO legislation tries to address. The exemption we suggest would free small fully mutual housing co-ops from burdensome regulation and significant costs which they cannot, and should not have to, shoulder in the same way as private landlords. This would help create a more conducive environment for new housing co-ops, whilst costing the Government virtually nothing in terms of public funds.

Therefore Friendly Housing Action calls upon the Government to use the Localism Bill 2011 to amend the Housing Act 2004 to introduce more appropriate treatment for FMHCs.

Conclusion

The coalition government's agenda for community self-help and a mutual approach to social provision is served extremely well by small housing co-operatives. They enable individuals with little economic power to house themselves sustainably and have the dignity and security of control over their own housing.

Both the HMO licensing regulations as laid out in the Housing Act 2004 and the new requirement to apply for Change of Use Class C4 create difficulties for housing co-ops, particularly new or developing ones.

Friendly Housing Action is an umbrella organisation for small housing co-ops in the UK. FHA proposes exemptions to both pieces of legislation for fully mutual housing co-operatives managed by general meeting.

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Appendix: wording of our proposal

We suggest an additional clause be inserted in the Localism Bill 2010-11 currently before the House of Commons, most likely in Part 6, Chapter 6. This would itself amend the Housing Act 2004 by adding at Schedule 14, Part 6 (3):

'Any building which is owned by a fully mutual co-operative housing association (as defined by S.1(2) of the Housing Associations Act 1985) the management of which is undertaken by general meeting.'

The definition in the 1985 Act being:

'In this Act "fully mutual", in relation to a housing association, means that the rules of the association—

(a) restrict membership to persons who are tenants or prospective tenants of the association, and

(b) preclude the granting or assignment of tenancies to persons other than members;

and "co-operative housing association" means a fully mutual housing association which is a society registered under the Industrial and Provident Societies Act 1965 (in this part referred to as "the 1965 Act") .'

This wording is closely derived from Part 5(g) of the Housing (Scotland) Act 2006, which already provides the proposed exemption for fully mutual housing co-ops in Scotland.