

Planning application for
the use as a small house in multiple occupation (Use Class C4)

80 Braemar Road, Fallowfield, Manchester M14 6PG

Prepared by Stephen Lamb DipTP MRTPI

21st February 2024

1. Introduction

- 1.1 The application seeks permission to change the use of the above property to a Class C4 small House in Multiple Occupation (HMO). The property is in use as a C3 dwelling and occupied by the applicant.

2. Site and Surroundings

- 2.1 The property is a small mid-terrace two-storey house dating from the late 19th/early 20th century. It has a small walled front garden and a small enclosed rear yard, with access to a gated passageway. The corner property at 74 and 76 Braemar Road is a former public house with residential above, which has been converted into two apartments (one at ground floor and one above) following approvals in 2011. These flats are occupied by students. No. 78 Braemar Road is a small HMO, having obtained permission on appeal on 12th April 2021 (ref: APP/B4215/W/20/3261807) and no. 82 is also a long established HMO. The application property is therefore flanked by HMOs and within the cul-de-sac to the east of Lindleywood Road, the overwhelming majority of properties are occupied as HMOs. The wider area, including Moseley, Braemar and Brailsford Roads consists of very high concentrations of student HMO housing.
- 2.2 The application property is situated in a residential area of Fallowfield, which is composed largely of similar terraced housing set out on a gridiron pattern. Braemar Road is residential street running on an East - West alignment, which is bisected by Lindleywood Road. The application property is located on the eastern section of Braemar Road close to the junction of Lindleywood Road. This part of Braemar Road is a cul-de-sac which has been traffic calmed with parking bays and landscaping which has been provided as part of an environmental improvement scheme.
- 2.3 The property is situated approximately 4km south of the City Centre. It is within 650m of the B5117 Wilmslow Road, which is a principle radial route connecting south Manchester with the City Centre, supporting high frequency

bus services. The main campus of the Universities of Manchester and major hospitals are located approximately 2km to the north along this corridor. The Universities of Manchester have many different campus locations and there are extensive University facilities at the Fallowfield Campus and Armitage Centre to the north of Moseley Road, within 400m of the appeal property.

3. Background and Planning History

- 3.1 The property is a small dwellinghouse which has been occupied by the applicant on his own as his sole residence for many years.
- 3.4 The change from a C3 dwelling to a C4 small HMO is normally permitted by virtue of class L of The Town and Country Planning (General Permitted Development) (England) Order 2015. However, the Council introduced an Article 4 Direction across the whole of the City to control this change, which became effective on 8 October 2011.
- 3.5 The Article 4 Direction paralleled the introduction of Policy H.11 (Houses in Multiple Occupation) of the Manchester Core Strategy which was adopted on 11 July 2012. This policy is produced along with its explanatory text in Appendix A at the end of this statement.
- 3.6 At the Core Strategy Examination in Public there was opposition to Policy H11, which lead to its amendment and current form. As can be seen from the explanatory text, it was intended to bring forward a Supplementary Planning Document to provide further guidance on the thresholds of acceptability of HMO concentrations. This has not however materialised. It was also explained at the EiA that the Council would provide a plan on request, where there were concentration issues, to show its records of HMO occupation within a 100m radius of a property. This service was originally provided, following the adoption of the Core Strategy, however recent requests for this information in connection with similar applications has been denied. In the absence of this information, a survey was undertaken in connection with the appeal at 78 Braemar Road, which remains up-to-date.
- 3.7 A previous application to change the use of this property to a small HMO was refused on 15th August 2022 (133537/FO/2022) for the following reasons:

1) The proposed development would result in the loss of quality residential accommodation, which would reduce the supply and availability of family housing. The development would thereby fail to positively respond to an identified housing need and thereby undermine the formation of cohesive and sustainable neighbourhoods where people would choose to live. The development would thereby be contrary to policies SP1, H1, H6 and DM1 of the Core Strategy for the City of Manchester.

2) The proposed development would result in an over intensive use of the application dwellinghouse and result in a consequential increase in the levels of noise and disturbance and activity through its occupation as a house in multiple occupation (HMO) with limited usable amenity space. The occupation of the dwellinghouse as an HMO would undermine the formation of sustainable communities, have a detrimental impact upon the amenity of neighbouring residents and thereby be contrary to policies H11, DM1 and SP1 of the Core Strategy for the City of Manchester.

- 3.8 This decision was not appealed. Instead the applicant has sought to sell the property as a dwellinghouse, but without any success. Reproduced below are two letters from a local Estate Agent who has undertaken the marketing of the property from December 2022, the latest one being received on 9th January 2024. This statement responds to the Council's reasons for refusal and explains why permission should now be granted.

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ESTATE AGENTS

Mr James O'Hara
80, Braemar Road
Manchester
M14 6PG

22nd June 2023

Dear James

RE: MARKETING UPDATE 80 BRAEMAR ROAD M14 6PG

To date the property has landed in 155,393 Rightmove search results with 7,177 of those viewing the full details/floor plans.

As discussed with you on a number of occasion the issue we are having is that the property can not be used as a HMO due to the lack of C4 usage and owner occupiers are reluctant to buy on a road where the vast majority of properties are student HMO'S.

Yours sincerely,



David Doyle
Senior negotiator

Registered office: 420 Wilmslow Road Withington M20 3BW
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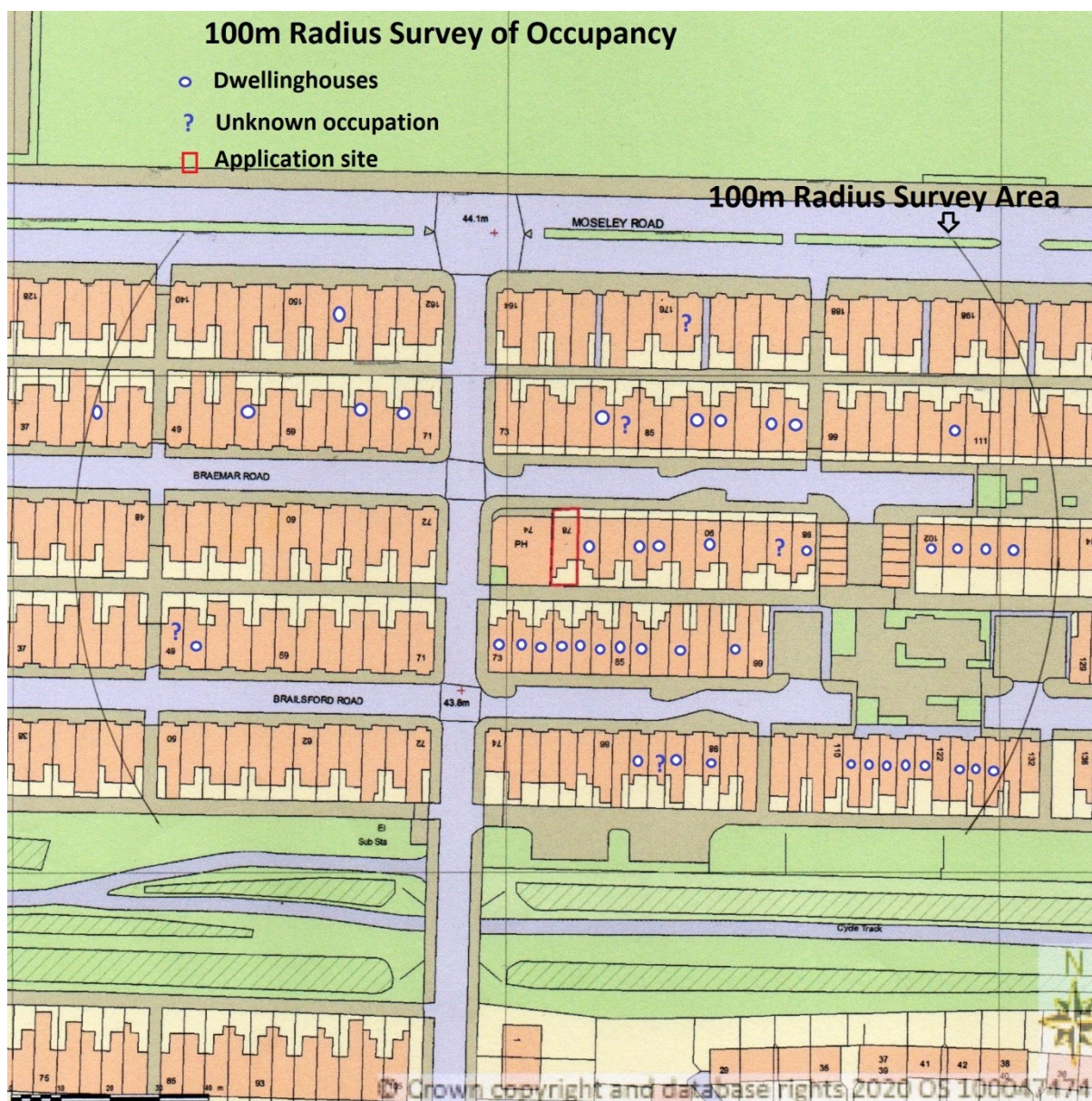
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4 Character of the Area

- 4.1 A survey was undertaken on 19 and 23rd February 2020 in connection with the application and appeal for 78 Braemar Road, showing those properties within a 100m radius of the appeal site, to determine as far as practicable whether the properties are occupied as single dwellings or are in multiple-occupation.
- 4.2 This survey was undertaken to establish the nature of occupation through a combination of observation, calling and enquiring at properties and discussion with occupiers about their local knowledge of the occupation of other neighbouring properties. This information supplemented the evidence of HMO uses taken from the planning register and HMO licensing records. The survey therefore represents the best available data on the character of the area and as far as can be established, is a reasonably accurate representation of the occupation of the surrounding properties.
- 4.3 The 100m radius of the survey covered 173 properties (those with more than 50% of the property being within the area survey area) at Braemar Road, Brailsford Road and Moseley Road. The occupiers of only 5 of the properties could not be established. The results of the survey are shown on the plan below. This information has been recently checked by reference to the HMO

Register, the planning records and a visual inspection and remains valid apart from the fact that the appeal property (78 Braemar Road) is now a lawfully occupied HMO.



- 4.4 Excluding the 5 properties with unknown occupation, the survey indicates the current situation is that 41 of the properties within the survey area out of a total of 169 properties are occupied as single dwelling houses, with all the others being in multiple occupation, overwhelmingly occupied by students. This means that only 24.3% of the properties within the defined area are in a class C3 use and the area is predominantly one of HMO occupation with 75.7% of the properties occupied in this way.
- 4.5 The plan above shows the distribution of the C3 dwellings in the original survey area and indicates that the strongest concentration of dwellings is in

the eastern part of Brailsford Road where the dwellings tend to be grouped, compared to the more pepper potted locations on Braemar Road. The plan clearly shows that the character of the area within the 100m radius defined by the policy, is now one of a predominantly student residential enclave with a relatively small remnant of the former housing occupation of the area.

- 4.6 Considering the immediate surroundings of the application property, there are 40 properties in the eastern section of Braemar Road (to the east of Lindleywood Road) within a 100m radius. This includes the application site and two flats at 74 Braemar Road. Excluding the two unknown occupancies this gives a total of 38 properties on this section of road, excluding the application site, of which 24 are occupied as HMOs representing 63.1% of the total properties. Therefore the immediate environment where most activity from the property will be experienced has a predominantly HMO character and this is particularly acute as the application property is in a row of and flanked by HMOs.

5 Policy Considerations

- 5.1 The above mentioned survey demonstrates that the area is no longer of mixed residential character, but one of overwhelmingly student HMO occupation. The character of the surrounding area has long since changed from being family orientated to a predominantly student enclave. The addition of one small HMO will not have any material impact on the character of the area or its sustainability other than to reinforce the reality, which is only likely to change in one direction, which is away from family housing.
- 5.2 The size of the application property dictates the level of occupation, which is incapable of conversion to anything more than a 3 bed HMO. This reflects the pattern of occupation throughout the area (although many of the surrounding properties have 4 bedrooms) and is therefore the norm and an important part of the established character.
- 5.3 The effect of the use of this property as a student HMO on the amenity and character of the area is likely to be imperceptible as the use for family accommodation is now the exception and the area has long since lost any semblance of a family orientated character. The character is now one of a transient student population, with the attendant youthful lifestyle, which differs markedly from that of a mature family or individual.
- 5.4 The Council recognises that student HMOs can have serious adverse effects on the amenity of families and this concern is the main reason it has developed specific policies within the Core Strategy (H11 and H12) to deal with it. However, these policies do not provide sufficient flexibility to deal with exceptional circumstances such as this, where the character of the area has changed and this is acknowledged in recent appeal decisions as explained below.

- 5.5 Therefore, whilst it is acknowledged that a change of use to C4 HMO would be conflict with Policy H11, the high concentration of HMOs in the area provides exceptional material circumstances which over-ride the strict application of the policy, justifying a departure.
- 5.6 This small property in fact offers little in the way of acceptable modern living conditions for a family. The property is a modest 3 bedroom house and lacks a private rear garden, normally associated with family housing. Its appeal as a family house is therefore very limited and along with the effects of the changes that have occurred to the neighbourhood, make the property highly undesirable as a family home.
- 5.7 This point is emphasised by the fact that the property has been advertised for sale since December 2022 without any interest as a dwellinghouse, as the above letters from the letting agent explains.
- 5.8 The policy should not be considered inflexibly and its strict application in this case would mean that the Council is trying to preserve a form of occupation for which there is very limited if any demand.
- 5.9 Most importantly, to deny the application only perpetuates the highly unsatisfactory situation, whereby the applicant cannot escape the adverse environmental conditions which high concentrations of student HMOs can bring.

6 Appeal Precedent

- 6.1 The same issues which are raised in this application have already been considered in an appeal at 43 Schuster Road, Manchester M14 5LX in 2014 (Appeal Ref: APP/B4215/A/14/2211026). This appeal decision letter is provided as a separate attachment (Appendix B).
- 6.2 In the case of Schuster Road, the Inspector recognised that as the concentration of HMOs exceeded 74% of households, the threshold had already been exceeded where there would not be any harm to the balance of housing provision and the addition of one more HMO would not undermine the sustainability of the area.
- 6.3 The principles applied by the Inspector at Schuster Road are applicable and highly relevant in this application as the level of concentration of student HMOs is very similar and the application property is much less attractive for a family than the substantial 4-bed house with garden at Schuster Road.
- 6.4 A second appeal decision (Appendix C) dated 30 January 2017 at 23 Brailsford Road, which is only 150m to the west of the application site is highly relevant as it relates to a similar property in close proximity (APP/B4215/W/16/31606). In that appeal, the concentration of HMOs and distribution of remaining houses lead the Inspector to the following conclusion:

“...I therefore conclude on this issue that the proposal conflicts with Policy H11 of the Core Strategy. But given the significant concentration of HMO’s that already populate the area, along with the nature and use of Brailsford Road, the appeal proposal would not harm the overall balance of housing provision and the housing market in the area, with particular reference to the formation of sustainable inclusive mixed communities.”

- 6.5 A third appeal decision (Appendix D) at 42 Schuster Road, dated 28 December 2018 (ref: App/B4215/W/18/3210218) is particularly relevant as it related to an area with lower concentrations of HMOs than in this case. The Inspector reasoned as follows:

....Figure 9.6 of the Core Strategy indicates that Schuster Road is in an area where HMOs make up 40-49% of properties and neither party disputes that there is a high level of HMO use in Schuster Road. As this area is heading towards a position where half the properties would be HMOs, the proposal could exacerbate the problems associated with over concentration of HMOs. The proposed change of use is therefore theoretically in conflict with Policy H11.

I acknowledge concerns in respect of the detrimental effects that increasing concentrations of HMOs can have in terms of nuisance, community cohesion, the delivery of local services and the character of an area. However, while Schuster Road may contain a high number of HMOs, there is no evidence that this number has been increasing to the detriment of community sustainability or the provision of local services, or that the character of the area is being harmed as a result. Moreover, the proposal would not in fact result in the creation of an additional HMO since No 42 has, to all intents and purposes, previously operated as an HMO apparently without any resulting nuisance. Given the particular circumstances, neither allowing nor dismissing this appeal would be likely to have any significant effect on the concentration of HMOs.

In conclusion, the proposed change of use would not result in an increase in the concentration of HMOs in this area. It would not result in any discernible effects on community sustainability or the provision of local services. It would not result in harm to the appearance of the area or to the living conditions of neighbouring occupants. Therefore, although there is an apparent conflict with the requirements of Policy H11, there are specific circumstances which justify a departure from the Policy in this case.

- 6.6 A fourth appeal decision (Appendix E) at 16 Richmond Road, approximately 300m south-west of the application site dealt with a retrospective application for HMO use and an extension at a similar type of property. The appeal was decided on 22 May 2019 (ref: APP/B4215/W/19/3222024). The Inspector’s reasoning for allowing the appeal in the face of the Council’s policy was as follows:

.....the appeal property is within an area that already contains a very high concentration of student HMOs. It is adjacent to an HMO to the east and also directly opposite a row of further HMOs. Its surroundings are therefore dominated by student HMO accommodation which is likely to deter family occupiers. Moreover, prior to the construction of the extension subject to Appeal B, the property had a relatively small rear yard area that would have provided only limited outdoor amenity space for family use. Whilst Policies H1 and H6 identify a shortage of family housing in the south of the City, in this case, I consider that the appeal property would be unlikely to appeal to families.

- 6.7 Finally and most tellingly, the Inspector's appeal decision for the next door property 78 Braemar Road (Appendix F) addressed the reasons for refusal in the Council's previous decision for 80 Braemar Road and explained the following:

Paragraph 12.....In the case before me, the concentration of HMOs already present in the area surrounding the site, and the apparent focus of the existing housing market towards HMOs represents a material consideration of significant weight. Thus, I am not convinced that the proposal would adversely affect the character or sustainability of the area surrounding the site or undermine the Council's strategic objectives to form inclusive, mixed and cohesive communities.

Paragraph 17.....I do not consider that the proposal would have a detrimental impact on the living conditions of neighbouring occupiers or on the sustainability of the wider community.

- 6.8 As can be seen from these appeal precedents, each of which has a significant and compelling message for the determination of this application, there is a need to look not just at the wording of Policy H11, but to consider the specific issues related to the nature and circumstances of the property and its surroundings. The physical configuration/limitations as a family dwelling and the high level of HMO occupation of the surrounding area, provide an overwhelming case for the approval of this application.

7 Conclusion

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. As such, it is acknowledged that the proposal is in conflict with Policy H11 of the Core Strategy.
- 7.2 However, the proposal will not undermine the function of the area, which the policy seeks to protect, as this has already changed and the tipping point

identified in the appeal precedents has already passed and is now one of being predominantly a student shared housing area.

- 7.3 Refusing the application and retaining a dwellinghouse use, will not materially alter the balance of housing in any beneficial or meaningful way and will simply condemn the applicant to the continuing environmental problems which the Council's policies are intended to address.
- 7.4 The circumstances of the case clearly justify a departure from the policy and to do so will not cause any material harm to the sustainability of the area or wider strategic regeneration objectives and therefore permission should be granted

Appendices

Appendix A

Manchester Core Strategy Policy H 11

Houses in Multiple Occupation

Change of use from a C3 dwelling house to a C4 HMO will not be permitted where there is a high concentration of residential properties within a short distance of the application site falling within one or more of the following categories:

- ***Exempt from paying Council tax because they are entirely occupied by full time students.***
- ***Recorded on Private Sector Housing's database as a licensed HMO.***
- ***Any other property which can be demonstrated to fall within the C4 or sui generis HMO use class.***

In cases where the concentration of such properties is significant but less high, the Council will examine property type and resident mix in more detail when considering an application for a change of use.

In areas of high concentration, extensions to HMOs (as defined in the Housing Act 2004) would not be permitted where this could reasonably be expected to lead to an increase in the level of occupation.

In parts of Manchester which do not have a high concentration of HMO/student housing but where the lack of family housing has threatened the sustainability of the community to the extent that regeneration activity with the specific intention of increasing the amount of family housing has taken place, there will be a presumption against changes of use which would result in the loss of a dwelling which is suitable for a family. Changes to alternative uses, including C4 and HMOs with more than six occupants, will only be acceptable where it can be demonstrated that there is no reasonable demand for the existing use. The approach above will also be used for change of use to a HMO which is classified as 'sui generis'.

Notwithstanding the policy requirements set out above, all proposals for change of use of existing properties into houses in multiple occupation, and all proposals for conversion of existing properties into flats (which might not necessarily fall within Class C4), would be permitted only where the accommodation to be provided is of a high standard and where it will not materially harm the character of the area, having particular regard to the criteria in policy DM1.

Policy Explanation

9.45 Tribal Consulting carried out a study for the Council which looked at the provision of student accommodation, including identifying areas of the City which experienced different types of impacts due to varying concentrations of students living there. The resulting student strategy was reported to Executive in May 2009 and issues raised by this are being taken forward through the Student Strategy Implementation Plan, with updates reported to Executive Committee.

9.46 The Student Strategy found that the problems caused by shared houses appear to be more noticeable (and raise more concerns) to residents where they occur in previously relatively stable neighbourhoods, and identifies these areas as those with between 20-40% student households. The strategy examines whether a 'tipping point' can be identified for the point where the proportion of shared houses (in this case student households) becomes damaging to a street or neighbourhood and concludes that once a 20% threshold is reached problems become harder to manage, but considers that a tipping point would be difficult to set universally across Manchester due to varying capacities of neighbourhoods to accommodate this type of housing, based on house type and demography. During the preparation of the Core Strategy, and particularly through consultation with local stakeholders, the Council concluded that a 10% threshold would be more appropriate. The Council will prepare a Development Plan Document to include thresholds which define "high concentration" (for example, 10% or 20%) and "short distance" (for example, within 100m of the application site) to further support application of this policy.

9.47 Policy H11 will be applied throughout the City. For illustrative purposes, Figure 9.6 shows where concentrations of council tax exempt student residential properties combined with non-student licensed HMOs exceed 10% of total residential properties, based on 2010 data, mapped by super output area.

9.48 A sustainable community must provide opportunities for a mix of households. Within this mix families are particularly important because they support a range of local facilities such as schools and tend to have a greater commitment to the neighbourhood as they live there longer than other types of households. For this reason, a more restrictive approach will be applied in locations which have benefited from specific regeneration activity aimed at increasing the provision of family housing, as described in Policy H11. This could include PFI schemes, CPOs and other forms of neighbourhood renewal where an increase in family-oriented accommodation was a stated aim of the intervention included in public documents. For the purposes of the policy, housing suitable for a family is a dwelling with 3 or more bedrooms, and no reasonable demand would be demonstrated by a period of at least six months on the market at a reasonable price or rental level or other compelling market evidence.

9.49 *The policy above will prevent further loss of Class C3 dwelling houses, which generally provide accommodation for families, to Class C4 HMOs, thus preventing further harm to residential amenity. It should be noted that the data sources which will be used to determine whether a HMO is to be permitted include properties exempt from paying council tax because they are lived in entirely by full time students – this category could potentially include a limited number of non-HMO residential properties, for example a situation where a student was living alone or with only one other person in a self-contained flat would still be a C3 use. Additionally there will be HMOs not covered by the categories in the policy but as these are not recorded by the Council they will not be counted when making a decision on permitting a C4, unless evidence can be provided to demonstrate where these are, as stated in the policy. Further information on data sources is given in the Evidence Issues section.*

9.50 *Small flats, which would not be capable of being used as a C4 property, would also be unlikely to provide accommodation for families. Therefore in marginal cases they will not be included in the total number of residential properties when calculating concentrations of properties that fall within the categories above. This will ensure that high numbers of purpose built flats which fall within the C3 Use Class do not skew the results by making it appear that there is a large amount of family housing already available nearby, when this is not the case. Social housing is excluded from the C4 Use Class therefore these properties would be excluded from the total number of residential properties in the same way in marginal cases.*

9.51 *Residential properties that would meet the C4 test from the 8th October 2011 but which existed in this format previously without being defined as such will not necessarily be known to the Council. Where planning permission is given for a change of use to a C4 HMO this will be recorded in the future to build up a clearer picture.*

9.52 *A change of use to a HMO which is lived in by more than six people is classified as ‘sui generis’, i.e. it is not classified by the Use Classes Order. This could be an extension to an existing C4 dwelling, or a change of use from C3.*

9.53 *The impacts of Policy H11 will be monitored to ensure that any risk of blight on properties in areas where there are high concentrations of HMOs is minimised; and the policy revised if necessary. The policy allows for change of use from C3 to C4 (in areas where HMO concentrations are low) in areas where specific regeneration initiatives to increase family housing have taken place, only where it can be demonstrated that there is no reasonable demand for the property as a C3 dwellinghouse.*

9.54 *Currently the amount of purpose built student accommodation in the planning pipeline exceeds the demand from both the projected growth in student numbers and latent demand from students living in the general rented sector, meaning that there is a future oversupply of bed spaces. This means that purpose built student accommodation will be able to meet any increase in overall demand for student accommodation in Manchester, whilst broadening housing choice in a way which reflects evidence of current demand. If a need for further purpose built*

accommodation arises the Council will encourage this where it satisfies the criteria set out in Policy Approach H12.

Evidence Issues

9.55 *The Council does not have a complete record of all HMOs in the City which would fall within the C4 definition, therefore the types of accommodation listed in the bullet points in the policy are used to try and cover as many different types of 'house share' accommodation as possible, and the first two types are data sources which can be easily used to display percentages of accommodation within these categories for a defined area.*

9.56 *Licensed HMOs are recorded on Private Sector Housing's database and include licensed HMOs (HMOs which meet specific criteria) as well as others which the Council has recorded for a specific reason, for example when it has focused on conditions in a particular area. A large number of HMOs in the City do not need to be licensed (for example because they are lower than three storeys) therefore this data source alone would not include enough types of HMO/shared housing to make a threshold policy meaningful. The Council can identify residential properties which are exempt from paying council tax because they are entirely occupied by full time students, but council tax data does not give the number of occupants. It is likely that the vast majority of these are HMOs but there are potentially a limited number which are not – for example a situation where a student was living alone in a self contained flat would be a C3 dwelling house.*

9.57 *It is also possible to identify residential properties where there are at least two occupants and all but one are disregarded for council tax purposes, for example students living with a non-student. However this data source was not included in the policy as it was considered that it was likely to incorporate a higher percentage of non-HMO properties.*

9.58 *There are no records of other HMOs, which are groups of unrelated adults sharing a house, and council tax data does not identify these.*

Appendix B (attached)

Appeal Decision for 43 Schuster Road, Manchester M14 5LX in 2014 (Appeal Ref: APP/B4215/A/14/2211026).

Appendix C (attached)

Appeal decision for 23 Brailsford Road, Manchester (Appeal Ref: APP/B4215/W/16/31606).

Appendix D (attached)

Appeal decision for 42 Schuster Road, Manchester (Appeal Ref: App/B4215/W/18/3210218)

Appendix E (attached)

Appeal decision for 16 Richmond Road, Manchester (Appeal Ref: APP/B4215/W/19/3222024).

Appendix F (attached)

Appeal decision for 78 Braemar Road, Manchester (Appeal Ref: APP/B4215/W/20/3261807)