

Bath & North East Somerset Council

MEETING:	Housing & Major Projects Policy Development & Scrutiny Panel
MEETING DATE:	19 th March 2013
TITLE:	Additional Licensing of Houses in Multiple Occupation
WARD:	ALL

AN OPEN PUBLIC ITEM

List of attachments to this report:

Appendix 1 - Evidence Report

Appendix 2 - Consultation Report

Appendix 3 – The Proposed Scheme

Appendix 4 – Equalities Impact Assessment

1 THE ISSUE

- 1.1 On 14 March 2012, Cabinet resolved to request that evidence be gathered to ascertain whether the legislative conditions for introducing the additional licensing of Houses in Multiple Occupation (HMO) could be met, and if so, undertake a 10-week public consultation exercise. The outcome of this process would be subject to a further report to Cabinet, expected to be June 2013, when a decision will be made as to whether to implement additional licensing, and if so, for what parts of the District and classes of HMO.
- 1.2 This briefing paper aims to provide the Panel with an overview of additional licensing, the results of the evidence collection and consultation exercise.

2 RECOMMENDATION

The Housing & Major Projects Policy Development & Scrutiny Panel is asked to:

- 2.1 Note and comment on the proposal to introduce the additional licensing of HMOs as detailed within this report.

3 FINANCIAL IMPLICATIONS

- 3.1 Housing Services has already incurred costs investigating the feasibility of additional licensing including developing the evidence base and undertaking the consultation exercise. These costs were not part of Housing Services financial plans and are being met by a re-prioritisation of existing work streams.
- 3.2 Licensing is both administratively complex and resource intensive. From experience of the existing mandatory licencing scheme, and looking at other schemes, the author estimates that for every 1,000 HMOs brought into licensing 4 permanent staff, or the equivalent resource, is required. However, fees can be levied to cover the administrative costs of licensing including publicity, back-office functions & inspections. Current mandatory HMO licensing fees start at £750 for a 5 year licence. However, with the added quantum of additional licensing it is considered that we will be able to achieve economies of scale that could be exploited, including re-designing the administration around e-work flow systems (apply for it/pay for it on-line). This would reduce the unit costs of both mandatory and additional licencing whilst still ensuring that the scheme remains cost-neutral to the Council.
- 3.4 It is important to remember that whilst the scheme should be cost neutral to the Council there are some significant risks associated with:
- a. calculating the fee, particularly given the lack of certainty around HMO numbers and in particular the timing of the IT e-work flow implementation;
 - b. the potential for the scheme to generate additional non-fee generating work, such as enforcement action;
 - c. the costs of defending any judicial challenge to the designation.

However, it should be noted that the service's experience in mandatory licensing means that risks 'a' and 'b' above, with the exception of the timing of the IT e-work flow implementation, are relatively modest and unlikely to pose a significant risk to the cost neutrality of the scheme.

4 THE REPORT

Background

- 4.1 The Housing Act 2004 increased Local Housing Authorities' (LHA) abilities to regulate the private rented sector by introducing three forms of licensing, these being: mandatory licensing of HMOs, additional licensing of HMOs, and selective licensing of the private rented sector. Operating a property covered by the designation without a licence is an offence punishable by a fine up to £20,000.
- 4.2 On 14th March 2012 Cabinet were presented with a report by consultants ARUP who were consulting residents and interested parties around the issue and impacts associated with the proliferation of HMOs. This report suggested that additional licensing could be beneficial in addressing some of the local residents' concerns. Cabinet therefore resolved to request that evidence be gathered to ascertain whether the legislative conditions for introducing the additional licensing of Houses in Multiple Occupation could be met, and if so, undertake a 10-week public consultation exercise. The outcome of this process would be subject to a further report to Cabinet, expected to be June 2013, whereby a decision will be

made whether to implement additional licensing, and if so for what parts of the District and classes of Houses in Multiple Occupation.

- 4.3 Introducing additional licensing is not a decision to be taken lightly by the Council. The conditions that must be satisfied are contained in Part 2 of the Housing Act 2004 and are further detailed in guidance issued by the Department of Communities & Local Government (CLG) issued in December 2007. The guidance makes it clear that additional licensing is not just another tool in the toolbox and that it should only be seen as an option to use when there are real problems with HMOs that have not been solved by using other available powers and a variety of approaches. This is reflected in the relatively low numbers of additional licensing schemes that exist at present, though in the last few years there have been an increase in the use of these powers.
- 4.4 The primary purpose of HMO licensing is to improve housing standards. It allows the LHA to ensure that conditions, amenity & fire safety standards comply with current legislative standards. As such the principal beneficiaries of licensing are tenants. However, some LHAs use the licence as a vehicle to improve the management of the property and to respond to complaints by local residents about the condition of houses and behaviour of tenants. Hence licences often contain conditions relating to the number of waste receptacles required and management conditions, such as, that the landlord takes reasonable steps to minimise any nuisance, alarm or harassment by tenants etc.
- 4.5 In order to ensure that the Council takes a lawful decision and therefore one that is resistant to a legal challenge by way of judicial review, it must be satisfied that the legislative test for the designation is met. That is firstly that there is genuine persuasive evidence that

“a significant proportion of HMO’s [to be included in the scheme] are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems for those occupying the HMO’s or for members of the public”.

Secondly, the Council must consider whether there are any other courses of action available to it that might provide, either alternatively or additionally an effective method of dealing with the problem or problems. Finally the authority must be satisfied that making the designation will

“significantly assist [it] to deal with the problem, whether or not it takes any other course of action as well”.

The Evidence Base

- 4.6 Appendix 1 contains the evidence base for introducing additional licensing. It includes the following headline information:
- The House Condition Survey (2012) indicates that the private rented sector within Bath & North East Somerset has increased significantly since 2004. There are now an estimated 4,400 buildings defined as HMOs making up a total of 6,310 dwellings. This is just over three times the national average rate.

- The Wards of Westmoreland, Oldfield and Widcombe have both the greatest number of shared HMOs (that is, excluding s257 HMOs¹ in flats) and the highest percentage of properties that are HMOs. They also host the highest number of HMOs subject to mandatory licensing (181 dwellings). The number of HMOs within three Wards that would be subject to additional licensing is estimated at between 700 -1,400 properties.
- Over recent years there has been a steady increase in fires reported in HMOs within Bath & North East Somerset. The likelihood of a fire in Bath & North East Somerset is 2.83 per 1,000 single household properties and 5.03 per 1,000 in an HMO.
- There is no clear evidence that individual HMO conditions are significantly worse in the Wards of Westmoreland, Oldfield and Widcombe than HMOs in other areas. However, there are a number of issues that raise concern including:
 - Over the previous 4 years Housing Services has received a higher rate of complaints about HMOs in the Wards of Westmoreland, Oldfield and Widcombe than in other areas. Similarly whilst these Wards host around a third of all HMOs they account for almost 50% of Council service requests relating to the management of HMOs and over 40% of those related to waste accumulations and disrepair.
 - Survey respondents advised that around a quarter had only been provided with battery operated smoke alarms. These are considered unacceptable due to the high failure rate which national evidence puts at around 45%. In addition around a quarter of respondents had not been provided with a fire blanket in the kitchen, considered essential in an HMO.
- Since mandatory HMO licensing has been introduced Housing Services has issued 487 new licences. Nearly 90% of all new licences were served with a schedule of works to bring them up to minimum licensing standards. The rate of significant hazards identified in the licensable HMOs in Wards of Westmoreland, Oldfield and Widcombe was greater than in the rest of the district.
- There is evidence to suggest that a significant number of HMOs are being poorly managed. This includes:
 - A direct relationship between HMOs by Ward and domestic waste complaints. Given the high number of HMOs within the Wards of Westmoreland, Oldfield and Widcombe this is a particular local issue.
 - Survey information suggesting that at least 40% of tenants within the Westmoreland, Oldfield and Widcombe area were not provided with copies of Energy Performance Certificate despite this being a legal requirement. In addition almost a quarter of tenants reported that they

¹ These are buildings converted into self contained flats and where less than 2/3rd are owner-occupied and the conversion did not meet the requirements of the 1991 Building Regulations.

had not been given a copy of the gas safety certificate, also a legal requirement.

- Survey respondents advised that two thirds had not been advised how to test their alarms or that they needed to be tested weekly. Over half were not advised what to do if there was a problem with the alarm.
- Whilst the voluntary property accreditation scheme has been very successful, its efficacy is being seriously challenged. Despite the dramatic rise in the private rented sector the number of new accreditations has been reducing, 25% lower in 2011/12 than the previous year. Re-accreditations have reduced by 18% over the same period.

It is also important to note that the evidence revealed a number of positive characteristics of the local HMO market. Some of these include:

- The House Condition Survey (2012) indicates that HMOs are not in poorer condition than the rest of the housing stock. Indeed they may be in a slightly better condition than the wider private rented sector. This is not the same as neighbouring authorities where HMO's are generally in poorer condition than other housing sectors.
- The rate of housing complaints from HMOs is lower than the rest of the private rented sector, though they are generally more complex to resolve.
- Most tenants indicated that they were satisfied with the facilities in their home, the information provided by their landlord/agent and that their home provides a safe and healthy place to live. Most tenants were also provided with 24 hour contact details for their landlord/agent.

Formal Consultation

- 4.7 After due consideration of the evidence base it was concluded that there was a reasonable likelihood that the legislative conditions for introducing additional licensing could be fulfilled. As such formal consultation was undertaken with landlords, residents and other interested parties on a proposal to introduce additional licensing for all shared HMOs (that is excluding s.257 flats) in an area broadly based upon the Wards of Westmoreland, Oldfield and Widcombe.
- 4.8 Whilst consultation activities have taken place at various times since March 2012, the formal consultation period ran from 17th September 2012 until 30th November 2012. The consultation was extensive and included the following activities:

Activity	Numbers
Stakeholders workshop	19
On-line questionnaire	272
Written and other responses	62
Drop in events x 3	116
University market stalls x 2	85
Polish Community Event – delegates and service providers	20
Southdown electric blanket testing event	5
Mandatory HMO licence holders mail shot	265
Accredited landlords email shot	400

Letting agents mail shot	46
National Landlords Association (NLA) meeting	68
Accreditation working group	20
West of England Private sector Housing group	4
B&NES Equality Impact Assessment Quality Control Group	8
West of England Landlord Panel	8
Residents (households visited in proposed area)	1120
Businesses visited in proposed area	169
Equality groups and service providers	23
Meetings with student's Union from Bath Spa and University of Bath	4
Local Development Framework (LDF) Steering group	10
B&NES website - Unique page views (17 th Sept – 30 th Nov 2012)	
www.bathnes.gov.uk/hmos (additional licensing info page)	515
www.bathnes.gov.uk/hmo (Article 4 Direction/additional licensing info page)	769
Total	4008*

* Will include an unquantifiable element of double counting

- 4.9 As a result of the above activities a total of 901 responses were received comprising: 272 completed on-line questionnaires; 62 written/other responses; 278 door step surveys; 289 responses during the consultation events which were either verbal or placed directly on display charts.
- 4.10 Overall the views on the proposal were both mixed and often strongly expressed. Residents, particularly those within the proposed area, were in favour of introducing the scheme as proposed. Indeed 89% of respondents to the on-line questionnaire who were resident in the area thought that the scheme would help improve both the condition of HMO and the local area. Over 92% thought the scheme would improve how HMOs are managed. Written and verbal responses spoke of disinterested/neglectful landlords and having to endure poor garden maintenance, rubbish accumulations and other anti-social activities.
- 4.11 Landlords and business were less convinced that additional licencing was appropriate. Indeed only 36% of the on-line respondents thought that the scheme would improve conditions; 27% thought it would improve the area; and 32% that it would improve the management of HMOs. Written and verbal responses spoke of additional bureaucracy and costs that would ultimately be passed on to tenants, that there should be better use of existing powers and that good landlords would be punished for the actions of bad landlords. There were also specific comments and suggested amendments on the proposed conditions.
- 4.12 Other organisations provided written responded with mixed enthusiasm for the proposal including:
- Avon and Somerset Police who were keen to see security measures included in any scheme.
 - Avon Fire and Rescue Service who were in favour of any measure that would protect occupiers and provide training to tenants.
 - Bath Spa University and Bath Spa Students Union (joint response) welcomed improving standards but had concerns about licensing and potential for rental increases.
 - The University of Bath Students Union were generally against any licensing and questioned the evidence and the conditions being proposed.

- The University of Bath were in favour of additional licensing.
- National Landlords Association and the Residential Landlords Association who were against the proposals raising concerns about the evidence base and the potential for rent increases.

4.13 Appendix 2 contains contains the report on the consultation exercise and provides a significant amount of information.

4.14 As a result of the consultation exercise a number of amendments are suggested to the proposed scheme. The proposed scheme is shown at Appendix 3 and includes a number of suggested amendments to the licensing conditions; the licence fee structure; the evidence report; and the proposed area being covered.

5 RISK MANAGEMENT

5.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

6 EQUALITIES

6.1 An initial equalities impact assessment has been undertaken and is attached in Appendix 4. The conclusions of the assessment in relation to additional licensing can be summarised as follows:

- Additional licencing is likely to have a positive effect on all equality groups by raising the standard of designated HMOs.
- Adequate provision should be made to help some equality groups fill in any necessary paperwork to comply with licencing process.
- Licencing could act as inflationary pressure on rental prices if landlords are able to pass the costs onto tenants. This is likely to have a disproportionate affect on people with lower salaries, usually young people.

7 CONSULTATION

7.1 Cabinet Member; Other B&NES Services; Service Users; Local Residents; Stakeholders/Partners.

7.2 Detailed fully within the Consultation Report at Appendix 2.

8 ISSUES TO CONSIDER IN REACHING THE DECISION

8.1 Social Inclusion; Customer Focus; Sustainability; Young People; Human Rights; Other Legal Considerations

9 ADVICE SOUGHT

9.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

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Background papers	None
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