

## Bath & North East Somerset Council

MEETING:	<b>Cabinet</b>	
MEETING DATE:	<b>12 June 2013</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		<b>E 2553</b>
TITLE:	<b>Housing in Multiple Occupation: Additional Licensing</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>		
<b>Appendix 1: Proposed designation</b>		
<b>Appendix 2: Evidence report</b>		
<b>Appendix 3: Consultation report</b>		
<b>Appendix 4: Equalities Impact Assessment</b>		
<b>Appendix 5: Legal opinion (exempt report)</b>		

### 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 additional licensing of Houses in Multiple Occupation (HMOs) could be met, and if so, undertake a 10-week public consultation exercise. This report informs Cabinet of the results of these activities and seeks a decision on whether to designate part of Bath as an area subject to additional licensing for specified types of HMOs.

### 2. RECOMMENDATION

The Cabinet agrees that:

- 2.1 An additional licensing scheme, as detailed within the designation report attached in appendix 1, is introduced for a period of 5 years commencing on the 1<sup>st</sup> January 2014 with licence applications being accepted from 1<sup>st</sup> October 2013.
- 2.2 The fee structure, as set out in annex 4 of appendix 1, is adopted for both the additional licensing and the mandatory licensing schemes.
- 2.3 The Head of Housing undertakes the appropriate and statutory steps to enable the introduction of the proposed additional licensing scheme.

### **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 have been 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 back-office functions and property 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.

### **4. CORPORATE OBJECTIVES**

- Promoting independence and positive lives for everyone
- Creating neighbourhoods where people are proud to live
- Building a stronger economy

### **5. THE REPORT**

#### **Background**

- 5.1 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.
- 5.2 On 14<sup>th</sup> 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 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.
- 5.3 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.

- 5.4 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.
- 5.5 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**

- 5.6 Appendix 2 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 ward level data of Oldfield suggest serious hazards at a rate which is significantly above the average in HMOs over the rest of the Authority.
  - The Wards of Westmoreland, Oldfield and Widcombe have both the greatest number of HMOs with shared facilities (that is, excluding s257 HMOs<sup>1</sup> 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.

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

- 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 some evidence that individual HMO conditions are significantly worse in the Oldfield ward than HMOs in other areas. However, there are a number of issues that raise concern across the three wards of Westmoreland, Oldfield and Widcombe 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.
  - 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 HMO residents 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 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.

5.7 In addition the University of Bath Students' Union recently conducted a survey to find out what students living within the City of Bath experienced with their private rented accommodation. The '*Rate your Rental*' online survey received over 500 responses and highlighted a number of concerns that students renting in the City have faced. Two of the key findings highlighted are that nearly one in three students are unhappy with their experience of private rented accommodation in Bath and two thirds have had problems with their accommodation, the main reason being damp and mould. The report is available from the [University of Bath Students' Union](#).

## 6. RISK MANAGEMENT

6.1 The report author and Lead Cabinet member have fully reviewed the risk assessment related to the issue and recommendations, in compliance with the Council's decision making risk management guidance.

## 7. EQUALITIES

7.1 An Equality Impact Assessment has been completed and is attached in appendix 4. Adverse impacts were identified and are being mitigated in the following ways:

Issues identified	Actions required
Ensure the consultation on additional licensing is accompanied by appropriate guidance and that additional support is available for equalities groups.	Ensure equalities groups are included in the consultation process
The completion of a licence application form can be difficult for those with certain impairments. There can also be communication difficulties if legal action is taken for noncompliance with the HMO licence provisions.	Assistance to be offered to all landlords to complete the application form.
Licensing may push up rental prices if landlords see the opportunity to pass on costs to tenants, (will affect those with lower salaries	Further consultation on the costs to consider how this potential impact can be minimised.

and students).	Where possible, efficiency savings to be made and passed on to landlords. Initial enquiries indicate that licensing does not push up costs.
May make those outside the areas where additional licensing is proposed more vulnerable to lower standards in shared housing (this may impact adversely on a number of equality groups)	On-going monitoring and consideration as to whether the scheme should be extended.
Potential for people to be uncomfortable or give inaccurate information when asked about living arrangements.	Sensitive consideration will need to be undertaken by Housing Officers when asking questions of people about their living arrangements when seeking to establish if a property is an HMO.

## 8. RATIONALE

- 8.1 Working in partnership with other interested parties, the introduction of a targeted additional licencing scheme would provide the Council with the ability to identify and address housing condition and management issues within the designated areas. The scheme will provide a platform to engage with landlords, tenants and local residents to work in partnership to mitigate some of the negative effects associated with such high concentrations of HMOs within this densely populated residential area.

## 9. OTHER OPTIONS CONSIDERED

- 9.1 A range of other options have been considered in detail within appendix 1 and include:

- Do nothing - given the information contained in the evidence report this is not an option.
- Targeted enforcement activity – not realistic having regard to scale of the issue
- Reactive enforcement – would not ensure that issues in all HMOs with shared facilities are addressed
- Partnership working – already being actively pursued however experience from the voluntary accreditation scheme and other examples of partnership working has confirmed that this fails to provide full engagement with all landlords.
- Selective licensing - eligibility criteria not met and evidence points to most of the issues being associated with HMOs and not the wider private rented sector
- Additional licensing across the whole district – not supported by the current evidence

## 10. CONSULTATION

- 10.1 Ward Councillors; Cabinet members; Policy Development and Scrutiny Panel; Other B&NES Services; Service Users; Local Residents; Community Interest Groups; Stakeholders/Partners; Other Public Sector Bodies.
- 10.2 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. This was, at least in part, jointly conducted in partnership with Planning Policy colleagues seeking views on the proposed planning controls for HMOs.
- 10.3 Whilst consultation activities have taken place at various times since March 2012, the formal consultation period ran from 17<sup>th</sup> September 2012 until 30<sup>th</sup> 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 <sup>th</sup> Sept – 30 <sup>th</sup> Nov 2012)	
<a href="http://www.bathnes.gov.uk/hmos">www.bathnes.gov.uk/hmos</a> (additional licensing info page)	515
<a href="http://www.bathnes.gov.uk/hmo">www.bathnes.gov.uk/hmo</a> (Article 4 Direction/additional licensing info page)	769
<b>Total</b>	<b>4008*</b>

\* Will include an unquantifiable element of double counting

- 10.4 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.

- 10.5 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 the condition of HMOs and 79% thought it would improve the local area; over 92% thought the proposed licensing conditions 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.
- 10.6 Landlords and businesses were less convinced that additional licencing was appropriate. Indeed only 36% of the on-line responses 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.
- 10.7 Other organisations provided written responses 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 (NLA) and the Residential Landlords Association who were against the proposals raising concerns about the evidence base and the potential for rent increases.
- 10.8 Appendix 3 contains the 'Public consultation – summary report' and a link to the associated documents which provide a significant amount of information on the consultation exercise and responses.
- 10.9 As a result of the consultation exercise a number of amendments are suggested to the proposed scheme. The proposed scheme is shown in the annexes of appendix 1 and includes a number of suggested amendments to the licensing conditions; the licence fee structure; the evidence report; and the proposed area being covered.
- 10.10 Councillor Tim Ball, Cabinet Member for Homes & Planning and council officers recently held a further and recent meeting with representatives and members of the NLA. The NLA wished to again express their concern about the proposed adoption of additional licensing and to suggest an alternative solution. The alternative solution comprised the NLA using their member database to contact members and remind them of examples of good landlord practice. This is a very positive step. However, it should be noted that the market penetration of the NLA is unquantified within the area concerned and there is anecdotal evidence that the more ineffective



and disinterested landlords do not belong to professional landlord organisations such as the NLA.

## **11. ISSUES TO CONSIDER IN REACHING THE DECISION**

11.1 Social Inclusion; Customer Focus; Sustainability; Other Legal Considerations

## **12. ADVICE SOUGHT**

12.1 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.

<b>Contact person</b>	Graham Sabourn, Head of Housing (01225 477949) Jeremy Manners, Senior Environmental Health Practitioner (01225 366276)
<b>Sponsoring Cabinet Member</b>	Councillor Tim Ball
<b>Background papers</b>	None
<b>Please contact the report author if you need to access this report in an alternative format</b>	