

Bath & North East Somerset Council

MEETING:	Housing & Major Projects Policy Development & Scrutiny Panel
MEETING DATE:	27 th March 2012
TITLE:	Control and Regulation of Houses in Multiple Occupation
WARD:	ALL

AN OPEN PUBLIC ITEM

List of attachments to this report:

Appendix A - Article 4 direction for houses in multiple occupation: Feasibility study by ARUP (February 2012)

Appendix B – Briefing note on additional licensing

1 THE ISSUE

- 1.1 On the 14th March Cabinet are due to consider whether they wish to proceed with Housing & Planning solutions to further control Houses in Multiple Occupation (HMOs) within the district. If the Cabinet report recommendation is accepted this would result in Housing Services formally investigating the feasibility of designating all or part of the district subject to additional licensing for classes of HMOs specified by the Council.
- 1.2 This briefing paper aims to provide panel with an overview of additional licensing and to ensure that their views and comments are incorporated into the process leading up to the final Cabinet decision to proceed or not, expected later in the year.

2 RECOMMENDATION

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

- 2.1 Note and comment on the attached report

3 FINANCIAL IMPLICATIONS

- 3.1 There are significant direct and indirect cost implications of introducing additional licensing. Licensing is both administratively complex and resource intensive.
- 3.2 Housing Services would need to look at how the existing Mandatory licensing process can be re-designed to be used more effectively for additional licensing, possibly through e-work flows, as pioneered on the Homesearch scheme. This work, establishing the evidence base, consultation, introducing and publishing the designations, appointment of additional staff will all be upfront costs. Independent research commissioned by ARUP estimated these costs to be £32,000. These costs are not part of Housing Services financial plans and would need to be met by a re-prioritisation of existing work streams, such as the suspension of the existing voluntary accreditation scheme.
- 3.3 From experience, 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. Fees can be levied to cover the administrative costs of licensing including publicity, back-office functions & inspections. Current HMO licensing fees start at £750 for a 5 year license. It is therefore reasonable to assume that the cost to the sector will be around £150,000 p.a. for every 1,000 HMOs brought into licensing.
- 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: calculating the fee, particularly given that the lack of certainty around HMO numbers; the potential for the scheme to generate additional non-fee generating work, such as enforcement action; and the costs of defending a potential judicial challenge to the designation.

4 THE REPORT

Background

- 4.1 In June 2011 the Cabinet requested that investigations should be undertaken into how planning controls (including an Article 4 Direction) could be used to control the future spread and increase in Houses in Multiple Occupation (HMOs) in Bath. A feasibility study was undertaken which collated the relevant local evidence and formulated options for action - see Appendix A - *Article 4 Direction for Houses in Multiple Occupation: Feasibility Study (February 2012)*.
- 4.2 The study shows that concentrations of student HMOs are particularly high in the wards of Widcombe, Oldfield Park and Westmoreland although there are other wards in the City with high numbers. It should be noted that HMOs play a wider role in providing housing for a range of groups including students, young professionals and graduates, lower paid workers and increasingly under 35 year old singles on housing benefit. However, the data upon which the numbers is estimated is not comprehensive and is limited to known HMOs, for example, because they are subject to the current Mandatory licensing scheme or are Council accredited.
- 4.3 Issues of concern expressed by residents are: inflating impact on cost of family housing, noise, litter, parking, environmental degradation and poor property maintenance, impact on perception of areas, and other impacts on the community related to high levels of transient population. However the report identifies both the positive and negative impact of HMOs. It found that in relation to indicators of

environmental degradation and social impacts (e.g. crime, noise, anti-social behaviour) there is not an apparent strong link with HMOs. However, the data gathered shows very high concentrations of HMOs in parts of the City, it is this that is the primarily cause of harm, impacting on community balance. It is this impact that is seen to be the justification for potentially implementing an Article 4 Direction.

- 4.4 A stakeholder workshop was held in October 2011 with local residents, HMO landlords, Business representatives, the Universities, Councillors and cross-service officer representation. The Bath Chamber of Commerce, HMO landlords and estate agents, both Universities and student groups have expressed that they would oppose a proposal by the Council to adopt an approach to restricting HMO growth in the city using planning controls.
- 4.5 Other mechanisms that contribute to alleviating any potential problems with HMOs, and consideration of approaches taken in other cities in the UK have also been included in the study. A number of those at the stakeholder workshop expressed a strong interest in introducing additional licencing schemes because it could help to address housing condition issues and enable greater regulation of all existing and future HMOs.

As a result of this report cabinet will on the 14th March make a decision to take forward the process to either:

- a) implement an Article 4 Direction in 2013 to remove permitted development rights to change use from a dwelling house (i.e. family house) to a small HMO (between 3 and 5 unrelated people living together) and introduce an HMO threshold planning policy to enable implementation.
- b) designate all or part of the district to be subject to additional licencing for classes of HMOs specified by the Council.
- c) a combination of the above
- d) take no additional action beyond that already in place.

Additional Licensing

- 4.6 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. Appendix B provides a summary of the three forms of licensing and the conditions that must be achieved. Operating a property covered by the designation without a license is an offence punishable by a fine up to £20,000.
- 4.7 Following the introduction of a General Approval Order in March 2010 an LHA can now introduce additional or selective licensing without the need for Secretary of State approval. However, introducing additional or selective 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.

- 4.8 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 low numbers of additional licensing schemes that exist at present. We understand that at present there are 11 additional licensing schemes in existence. Appendix B provides some further details on these schemes including LHA & scope of scheme.
- 4.9 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 principle 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.
- 4.10 To withstand the challenge of a judicial review the Council would need to be able to produce evidence to meet the over arching condition contained in the Housing Act 2004 which states that the LHA should:

consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public

- 4.11 An analysis of the evidence would be required to confirm that the above requirements are met. At this stage this is not clear.
- 4.12 The designation can cover a single ward or the entire district. It can cover a specific type of HMO or all types. Appendix B confirms that the existing schemes range from a single ward (Cardiff) to a whole City (Newport, Oxford). From 3 storey HMOs (Hastings) to all HMOs (Oxford, Cardiff, Hastings, Newport & Slough). However, the CLG guidance states that...

it is not the intention of the legislation that additional licensing should apply to all types of HMO across entire LHA areas. It should be used to tackle specific problems in specific areas.

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. 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 may push up rental prices if landlords see an opportunity to pass on costs to tenants which will affect people with lower salaries and students (both most likely to be young people).
- Wards with highest BME populations (Bathwick/Abbey) also have high proportion of HMOs, so these groups may be disproportionately affected.

7 CONSULTATION

- 7.1 Cabinet Member; Other B&NES Services; Service Users; Local Residents; Stakeholders/Partners.
- 7.2 The ARUP report included a range of consultation including working with Ward Councillors, discussions with the Universities and other key stakeholders including local residents, HMO landlords and estate agents. In addition a Stakeholder Workshop was held in October 2011, a report of this workshop is included within Appendix A.
- 7.3 Before additional licensing could be introduced the Council would be required to undertake a formal 10 week consultation exercise. To ensure that this is meaningful if should undertaken following the establishment of the evidence base.

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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