

PRIVATE SECTOR LICENSING

LEGISLATIVE BACKGROUND

The Housing Act 2004 increased Local Housing Authority's (LHA) abilities to regulate the private rented sector by introducing three forms of licensing, these being:

- Mandatory licensing of HMOs – applies to HMOs of 3 storeys or more, occupied by 5 or more people who are not a single household.
- Additional licensing of HMOs – allows LHA to designate all or part of their district to be subject to additional licensing for classes of HMOs specified by the LHA.
- Selective licensing – allows LHA to designate all or part of their district to be subject to the licensing of privately rented accommodation.

Operating a property covered by the designation without a license is an offence punishable by a fine up to £20,000.

HMOs are buildings or parts of buildings which are occupied by more than one household. These may be occupied as bedsits, shared houses, self-contained flats or hostels, or a combination of these. The majority of HMO accommodation is privately rented. The text box below contains a full definition of an HMO under the Housing Act 2004.

HMO Definition: Housing Act 2004

- 1) a building in which more than one household shares a basic amenity, known as "the standard test". A basic amenity includes a bathroom, toilet or cooking facilities, or
- 2) a flat in which more than one household shares a basic amenity within the flat, known as "the self-contained flat test", or
- 3) a building which has been converted and does not entirely comprise of self contained flats, known as "the converted building test", or
- 4) a building which is comprised entirely of converted self-contained flats and the standard of the conversion does not meet, at a minimum, the standard required by the 1991 Building Regulations, and less than 2/3 of the flats are owner-occupied, known as the "section 257 HMO".

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 & in draft form in February 2010, (1) (2).

Table 1 provides a summary of the three forms of licensing and the conditions that must be achieved. Selective licensing, which is framed around low-demand housing, is not a realistic option for Bath & North East Somerset and so this option will not be discussed further in this briefing.

Table 1: Licensing Summary

Licensing Type	Properties Affected	Conditions to be Meet
Mandatory	HMO ⁽¹⁾ s that are: <ul style="list-style-type: none"> • 3 storeys or more; & • occupied by 5 or more people; & • form 2 or more households 	n/a
Additional HMO	HMO ⁽¹⁾ s that are: <ul style="list-style-type: none"> • In designated area; & • Fall within designated class &/or size 	<ul style="list-style-type: none"> • consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, orto be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public • have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question (these codes relate to University managed accommodation) • consider whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question • that making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action as well) • consult persons likely to be affected by the designation for a period of not less than ten weeks. • designation cannot last for more than 5 years and must be reviewed
Selective	Any private rented properties that are: <ul style="list-style-type: none"> • In designated area 	<ul style="list-style-type: none"> • the area is one that is experiencing low housing demand (or is likely to become such an area) and the LHA is satisfied that making a designation will, when combined with other measures taken by the LHA, or by the LHA in conjunction with others, would contribute to an improvement in the social or economic conditions or the area • the area is experiencing a significant and persistent problem caused by anti-social behaviour and that some or all private sector landlords in the area are not taking appropriate action to combat the problem that it would be

		appropriate for them to take; and the making of such a designation, when combined with other measures taken by the LHA in conjunction with other, will lead to a reduction in, or elimination of the problem.
		<p>CLG guidance (3) has additionally added the following for both selective & additional licensing:</p> <ul style="list-style-type: none"> • Whenever considering whether to make an additional or selective licensing designation local authorities must also ensure that the exercise of the power is consistent with their overall housing strategy • The local authority should seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and antisocial behaviour affecting the private rented sector as regards combining licensing with other action taken by them or others • The local authority should consider whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of achieving with the objective or objectives that the designation would be intended to achieve, and consider that making the designation will significantly assist them to achieve the objective or objectives (whether or not they take any other course of action as well) • Other courses of action that a local authority might instead consider (as an alternative to, or in addition to, additional licensing) include voluntary measures such as landlord accreditation. • Local Authorities may also wish to consider using other tools available under the Housing Act 2004 such as Interim Management Orders for non-licensable HMOs.

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. Table 2 provides some further details on these schemes including LHA & scope of scheme.

Table 2: Current Licensing Schemes

ADDITIONAL LICENSING	SELECTIVE LICENSING
Approved with CLG consent (before 1 April 2010)	

<p>LB Hounslow (5 wards; 2 storey 4+ people) LB Hillingdon (13 wards; 2 storey 5+ people) LB Ealing (designated area; 2 storey 4+ people)</p>	<p>Blackburn Bolton Burnley Durham Gateshead Hartlepool Leeds Manchester Middlesborough LB Newham Salford Sunderland</p>
<p>Approved under general consent (after 1 April 2010)</p>	
<p>Oxford (All district; all HMOs) LB Croydon (21 wards; all HMOS exc s257) East Riding of Yorkshire (designated area; 2 storey 4+ people) Peterborough (3 wards; 2 storey 3+ people) Cardiff (1 ward; all HMOs) Hastings (4 wards; 3+ storey) Slough (designated area; all HMOs) Newport (All district; all HMOs)</p>	<p>Hyndeburn Newcastle Thanet Oldham</p>

ADDITIONAL LICENSING RATIONALE

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 appearance 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. Interestingly Oxford even specifies that when electrical appliances are replaced only A rated units can be used, thus contributing to their corporate goals of reducing carbon emissions. Clearly, there is a balance between stretching the conditions to achieving wider corporate aims and having conditions that would withstand the rigour of a legal challenge.

EVIDENCE REQUIRED

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...

“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”.

Likely evidence could include:

- Housing conditions – is there evidence to suggest that housing conditions are poor, or at least worse, in the proposed designation.
- Housing Management - is there evidence to suggest that housing management is poor, or at least worse, in the proposed designation
- Other solutions – have these been tried and found unsuccessful.

An analysis of the evidence would be required to confirm that the above requirements are met. At this stage this is not clear.

SCHEME DESIGN

The designation can cover a single ward or the entire district. It can cover a specific type of HMO or all types. However, the CLG guidance,(3)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”

Table 2 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).

To assist with the impact of introducing additional licensing LHAs have generally adopted a phased approach, for example, 3 storey HMOs first, then 2 storey properties or on an phased geographical basis.

OPERATIONAL IMPACTS

The following table provides our baseline knowledge on HMOs within the City wards, based upon voluntary property accreditations and tenant complaint data. However, the experience in Oxford was that their data underestimated the number of HMOs in existence by a factor of at least 250%.

Ward	HMOs subject to Mandatory licencing	Potential HMOs subject to Additional licensing	HMOs in Flats (S257) (% could be subject to Additional licensing)
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Kingsmead	37	180	332
Abbey	19	86	419
Widcombe	58	263	149
Westmoreland	68	356	16
Walcot	12	113	220
Oldfield	53	287	25
Lansdown	8	41	171
Newbridge	23	93	82
Lyncombe	14	71	72
Whole district	380	1400	1600

Introducing additional licensing for all HMOs across the three south Bath wards of Oldfield, Westmoreland & Widcombe would bring at least an additional 1,000 HMOs into licensing, significantly more if the Oxford experience is replicated.

From experience, and looking at Oxford's experience, the maximum expected number of completed HMO inspections is 100 per officer per year. This is an ambitious figure, particularly given that the Audit Commission state that an officer could reasonably be expected to improve 30 HMOs per year. In addition licensing is administratively complex, with most forms currently being completed incorrectly or the incorrect fee paid. Fit & proper person checks also add to the complexity.

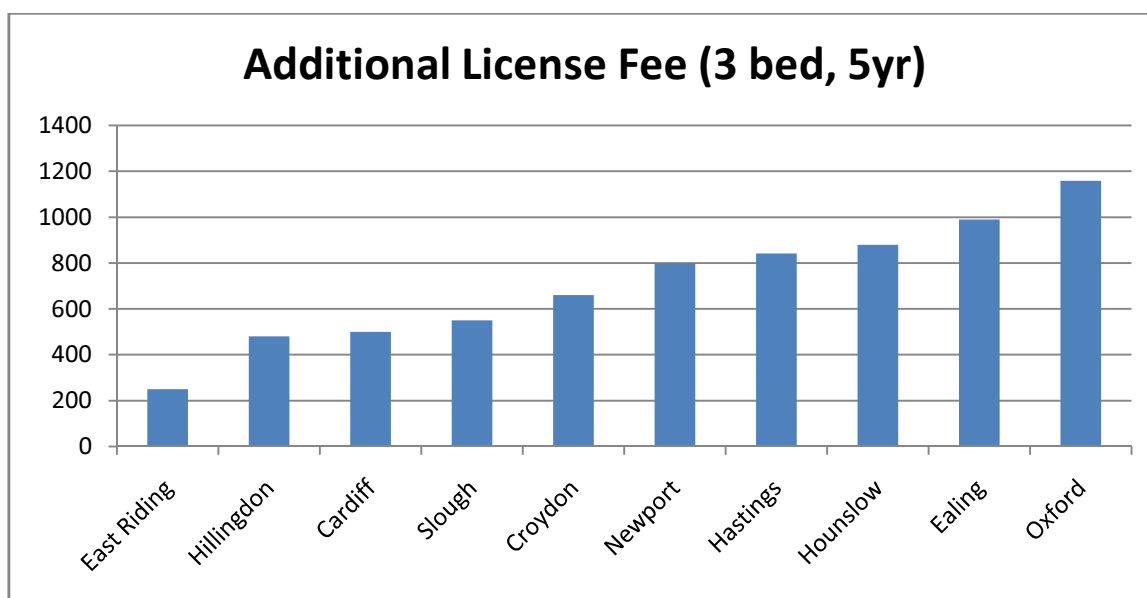
As such for every 1,000 HMOs brought into licensing with all being subject to inspection and assuming 10% are re-inspected each year as an audit measure it is estimated that an additional 4 staff will be required. In addition we would need to look at how the process can be re-engineered to be more effective, possibly through e-work flows as adopted with our housing allocations system. This work, establishing the evidence base, consultation, introducing & publishing the designations, appointment of additional staff will all be upfront costs.

Given the significant overlaps between voluntary accreditation & licensing it would seem sensible to withdraw the voluntary accreditation scheme if licensing is progressed. The resources released would then be available to cover the additional work of licensing not covered by the fee, for example, increased enforcement activity or if stopped with immediate effect could be used to fund the upfront cost detailed above. However, this is clearly a risk should licensing not be adopted in the future.

FEE STRUCTURE

Fees can be levied to cover the administration costs of licensing including publicity, back-office functions & inspections. There is inevitably some debate as to where the role of licensing administration ends and the LHA's statutory responsibility for enforcement action begins. Our current mandatory license fees start at £750 for a 5 year licence. This is based upon full cost recovery and limited enforcement activity. Table 3 below shows we understand other LHA fees are for Additional licensing.

Table 3: Additional Licensing Fees



In addition it is worth remembering that whilst the scheme should be cost neutral there are some significant financial risks associated with: calculating the fee, particularly given the lack of certainty around HMO numbers; the potential to generate non-chargeable work, that is, additional enforcement activity and the initial scheme investigation/evidence costs.

POTENTIAL BENEFITS & RISKS

	Positive Impacts	Challenges
Council	<ul style="list-style-type: none"> • Council is seen to be responsive to local needs • Potential for more balanced communities, assuming scheme creates downward pressure on HMOs & overspill into other wards • Better information on HMOs • Named contact for HMO should mean more effective engagement when issues arise 	<ul style="list-style-type: none"> • May not deliver political objectives e.g. in practice may not significantly reduce the local impact of HMOs • Financial risks. Potential to miscalculate fee, increase in unfunded work e.g. enforcement activity; research & other set up work; legal challenges • Potential to reduce housing capacity if properties turned into family homes • End to the established voluntary accreditation scheme • The two main landlord associations appear to be opposed to discretionary licensing and have assisted with local challenges & threatened judicial reviews
Tenants	<ul style="list-style-type: none"> • Improved housing conditions • Better engagement with landlord 	<ul style="list-style-type: none"> • Cost of licence likely to be passed onto tenant – circa. 1% increase in rent on 3 bed, 4 person student house
Local Residents	<ul style="list-style-type: none"> • Potential for reducing the negative impact of HMOs, particularly around external conditions & waste disposal • Potential for more balanced communities 	<ul style="list-style-type: none"> • Reduction in value of homes & at least initially potentially harder to sell.

Landlords	<ul style="list-style-type: none"> • Produces “level playing field” for landlords in designation by tackling less scrupulous landlords • Allows landlords to use the Council as an “excuse” for tackling tenant issues. • Provides support for those landlords that require guidance & assistance 	<ul style="list-style-type: none"> • Increased costs/red tape associated with licencing • Council seen to be “at war” with landlords • Council seen as punishing good landlords because of the behaviour of a small number of bad landlords, thus risking the good will established through the voluntary accreditation scheme.

EXAMPLE DELIVERY PROGRAMME

The general consent order requires the LHA to undertake at least 10 weeks of consultation. In addition the scheme cannot become effective for at least 3 months following designation.

Ref	Milestone	Date for completion
1	Cabinet Report – establish evidence gap, upfront financial commitments & decision to proceed	March 12
2	Evidence Gathering	June 12
3	Initial scheme design	June 12
4	Commission consultation	July 12
5	Final scheme design	November 12
6	Cabinet Report – designation decision	November 12
7	Legal notification & promotion of scheme	December 12
8	Appointment of scheme staff	February 13
9	Commence scheme – phase 1	April 13
10	Commence scheme – subsequent phases	6-12months later

References

1. **CLG**. *Approval steps for additional and selective licensing in England*. 2007.
2. —. *A guide to the licensing & management provisions of the Housing Act 2004 (Draft)*. 2010.
3. **ARUP**. *Article 4 Direction for HMOs in Bath: Feasibility Study*. 2010.
4. **LACORS**. *Additional & Selective Licensing: A Guide for Practitioners*. 2011.