

REPORT TO: CABINET

DATE: 16 OCTOBER 2014

TITLE: ADDITIONAL LICENSING OF HOUSES IN MULTIPLE OCCUPATION

PORTFOLIO HOLDER: COUNCILLOR MARK WILKINSON

LEAD OFFICER: GRAHAM BRANCHETT, CHIEF OPERATING OFFICER (01279) 446200

CONTRIBUTING OFFICER: MICHAEL PITT, ENVIRONMENT AND LICENSING MANAGER (01279) 446114

This is a Key Decision

It is the Forward Plan as decision number I002256

Call-in Procedures may apply

This decision will affect no ward specifically.

RECOMMENDED that:

- A** The whole of the Harlow District be made subject to additional licensing of Houses in Multiple Occupation, for five years from 1 April 2015.
- B** The Head of Governance be authorised to make the necessary designation.
- C** The additional licensing scheme adopted to be as set out in the consultation document attached at Appendix 1, with the exception that no fee shall be charged for variations of licences. The Council's Fees and Charges policy thenceforward to apply.
- D** The Chief Operating Officer be authorised to make necessary operational arrangements and minor and consequential amendments to the scheme in accord with the legislation and prevailing Council policy.
- E** The effectiveness of the scheme be monitored and evaluated over the period of its operation and a further report be submitted to Cabinet in 2018/19 to allow for determination of the appropriate course of action on expiry of the designation in 2020.

REASON FOR DECISION

- A** There is evidence that extending licensing to classes of Houses in Multiple Occupation [HMOs] not covered by national mandatory the licensing scheme is necessary to improve their management for the benefit of HMO residents

and neighbouring communities.

- B** Such a scheme would make meeting appropriate standards mandatory before accommodation is occupied, which could not be achieved in other ways; is expected to improve the safety and standards of accommodation provided by HMOs, improve the standards of HMO management by landlords, reduce concerns about nuisance and antisocial behaviour and assist the Council in dealing with any rogue landlords in the sector.

BACKGROUND

1. Having received on 29 November 2012 evidence from stakeholders on the issues raised by multiple occupation in Harlow, at its meeting of 5 September 2013 the Council's Community, Citizenship, Regeneration and Environment Overview Working Group considered a report setting out an option for an additional licensing scheme for Houses in Multiple Occupation
2. At its meeting of 26 September 2013, Cabinet resolved that statutory consultation on an additional licensing scheme for Houses in Multiple Occupation in Harlow be undertaken.
3. Such a consultation has been carried out and it is now necessary to consider the responses received, whether the statutory requirements are satisfied, and to determine whether to proceed with a scheme.

CONSULTATION

4. The consultation document is reproduced at Appendix 1. The consultation methodology is reproduced at Appendix 2. Responses to the consultation are reproduced at Appendix 3.
5. The Environment and Licensing Manager has replied to those consultees who made adverse comments setting out the Council's position on each matter raised. The text of this reply is reproduced at Appendix 4.

SUMMARY OF CONSULTATION RESPONSES

6. Ten written responses were received. Of these, four expressed positive views of the proposals, and four expressed broadly negative views. There were two responses that have been assessed as neutral because they did not offer an opinion on the proposals. The positive views were given by residents, residents' associations, and the Citizens' Advice Bureau. The negative views were given by landlords and a landlords' association.

7. Comments on the proposed scheme may be summarised as set out below.

Comments in favour:

- i. More control is needed.
- ii. Proposals would raise management standards reducing problems with noise, waste, litter and antisocial behaviour.
- iii. Proposals would improve the quality of HMO accommodation for tenants.
- iv. Proposals would make available better information on landlords and the accommodation available.
- v. Proposals would better enable the Council to address specific issues raised by tenants.
- vi. Proposals would deter unscrupulous landlords from seeking to escape mandatory licencing by making untrue claims about the number of their tenants.
- vii. Proposals would be cost-effective for society as a whole as it would prevent problems from developing.
- viii. Proposed annual licencing with annual checks would detect issues early and prevent more serious problems from developing.

Comments not in favour:

- i. Proposals are not necessary.
- ii. Existing Powers are adequate.
- iii. Proposals are a revenue raising exercise.
- iv. Good landlords will be penalised.
- v. Landlords will be deterred from providing much needed affordable accommodation.
- vi. Costs will be passed on to tenants.
- vii. Regulation is a burden on business.
- viii. Annual licencing is not necessary, licences should be for five years.
- ix. Licencing will not ensure that HMOs meet minimum requirements.
- x. Licencing will not exclude rogue landlords who will avoid the requirements.
- xi. There should be a higher penalty for failing to declare an HMO.
- xii. Annual licencing is not required; a five-year licence is adequate.

STATUTORY REQUIREMENTS

8. The power to adopt a scheme for Additional Licencing provided in the Housing Act 2004 is subject to statutory provisos which are set out in the table below. The Council must satisfy itself that these are met before it may adopt a scheme. The principal evidence that indicates that each proviso is met is outlined in the second column of the table.

	Proviso: the Council must	
1.	Consider that a significant proportion of the HMOs of the relevant 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.	<p>Residents' concerns about the impact of unlicensed HMOs are exemplified by testimony to the Council's Community, Citizenship, Regeneration and Environment Overview Working Group on 29 November 2012. The concerns expressed include nuisance, poor management, overcrowding, poor management and adverse impact on social cohesion.</p> <p>Analysis of complaints by members of the public to the Council's Environmental Health Team of nuisance including noise, waste management, and antisocial behaviour in relation to premises known to be HMOs demonstrates a rate approximately six times higher than that applying to premises in other forms of tenure.</p> <p>Council Environmental Health Officers have had cause in connection with their duties to visit HMOs in relation to management and housing standards. Formal action to improve housing standards would have been justified by housing conditions in 92% of such cases, to improve matters such as safety and fire protection, means of escape, access to amenities, and management.</p>
2.	Have regard to any information regarding the extent to which any codes of practice approved under section 233 of the Housing Act 2004 have been complied with by persons managing HMOs in the area in question	Codes of Practice Under s 233 of the Act relate to accommodation managed for or on behalf of Higher and Further Education establishments and to date have not been found to be relevant to HMOs in Harlow.
3.	Consider whether there are any other courses of action available to it	The Council has and will maintain arrangements to respond to

	<p>(of whatever nature) that might provide an effective method of dealing with the problem or problems in question.</p>	<p>complaints by tenants and by neighbours, however by their nature these responses are reactive and do not address the following issues</p> <ul style="list-style-type: none"> • HMOs can be established and occupied lawfully without any reference to the Council or to appropriate standards thus putting tenants at risk until and unless the HMO is brought to the Council's attention • Tenants seldom complain about unsatisfactory conditions because they may not know what they should expect and are often concerned about prejudicing their tenure • Over-occupation once established is difficult to remedy quickly without depriving tenants of their homes • Community tolerance of an HMO may well have been lost by the time neighbours are motivated to contact the Council, damaging community cohesion <p>Only licensing offers the opportunity to ensure that HMOs meet appropriate standards before they are occupied.</p>
4.	<p>Consider 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).</p>	<p>Licensing offers the opportunity to ensure that HMOS meet appropriate standards before they are occupied.</p>
5.	<p>Have consulted persons likely to be affected by the designation;</p>	<p>The Council carried out consultation as set out in Appendix 2.</p>
6.	<p>Ensure that the exercise of the power is consistent with the Authority's overall housing strategy</p>	<p>The Council's first Priority in its Corporate Plan is More and Better Housing and review of HMO licensing is specifically identified as</p>

		contributing to better housing. This is reflected in the Council's Private Sector Housing Action plan which also identifies the contribution that HMO licensing can make to better housing.
7.	Seek to adopt a coordinated 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	Licensing and Environmental Health functions are carried out by the same team within the Council's Community Wellbeing service which also incorporates the Council's Community Safety Team with strong links to the Police and other local partners through Safer Harlow Partnership and the emerging Health and Wellbeing Partnership. This forms a firm basis for a holistic response to HMO management and other issues relevant to privately rented housing.

PRINCIPAL OBJECTIONS

9. The Council should consider objections to the scheme. The Principal objections made on consultation are set out in the table below alongside comment in response.

Proposals are not necessary	Reasons that suggest licensing is necessary are set out above
Existing Powers are adequate	Existing powers are reactive. Reasons why proactive licensing would better address issues in HMOs are set out above.
Proposals are a revenue raising exercise	The Council's charges are intended to recover the costs of licensing and inspection. They will be subject to annual review. Should accounts demonstrate that a surplus is generated for successive years, the Council will be obliged to rebalance fees and charges to reflect this.
Good landlords will be penalised	The Council will seek to identify all HMOs and make them subject to the scheme. All landlords will pay. Good landlords will benefit from

	<p>elimination of unfair competition from poor landlords who do not offer reasonable standards of service. The Council has sought to make its fees and charges scheme reflect the lower costs involved in regulating good landlords</p>
<p>Landlords will be deterred from providing much needed affordable accommodation</p>	<p>Annual licensing will allow the Council to monitor the effectiveness of the scheme. Evidence of an adverse effect on housing availability out of proportion with the benefits of the scheme will be taken into account</p>
<p>Costs will be passed on to tenants</p>	<p>This will be a choice for landlords but this risk must be balanced against the risks of poorly managed and unsafe property being let for example</p>
<p>Regulation is a burden on business</p>	<p>Regulation has costs but provides a level playing field and protects the compliant businesses from unfair competition with the unscrupulous</p>
<p>Annual licensing is not necessary, licences should be for five years</p>	<p>Annual licensing allows for change, for re-inspection, for review of the scheme, and spreads the total costs evenly</p>
<p>Licensing will not ensure that HMOs meet minimum requirements</p>	<p>Licensing will mean that a non-compliant HMO is immediately on the wrong side of the law and substantially strengthen the Council's powers.</p>
<p>Licensing will not exclude rogue landlords who will avoid the requirements</p>	<p>The Council will seek out HMOs and apply the new sanctions available for evasion of licensing.</p>
<p>There should be a higher penalty for failing to declare an HMO</p>	<p>The Council has provided for an additional charge for the administrative costs of chasing up slow or forgetful landlords. If landlords wilfully evade licensing prosecution is more likely to be appropriate when the courts may impose substantial penalties and costs on conviction.</p>

FEES AND CHARGES

10. The proposed fees and charges scheme is as consulted on and set out at pages 5-6 of Appendix 1, with the exception that no fee would be charged for a licence variation. The scheme is intended to be consistent with the requirements of the European Services Directive 2009: fees and charges should cover the full cost of operating the scheme, but should not generate a surplus and should not cover the costs of taking enforcement action against those who do not apply for licences. There are many variables but the Council has predicted that income for a licensing regime would amount to £60,000 in the first year. Necessarily the Council has predicted that its costs in operating the scheme would also be £60,000. The Council is not expected to be able to predict costs with exact precision from year to year nor to adjust individual fees, but it is expected to keep fees under review and make adjustments that reflect costs to prevent a surplus from accumulating over time. The Council's Fees and Charges policy permits such annual review.
11. The scheme described in the consultation document attached at Appendix 1 envisaged a fee for variation of licence details by licensees. It has since been established that such a fee is not lawful and so any scheme adopted would omit a fee for such variations.

ISSUES RAISED IN DEVELOPMENT OF PROPOSALS

12. The current proposals have been developed after consideration by Cabinet and by the Community Citizenship Regeneration and Environment Overview Working Group that existed to advise Cabinet. A number of issues relevant to additional licensing were recorded:
 - i. The working relationship and information gathering between Revenues and Benefits and the Border Agency;
 - ii. Closer liaison between Council departments
 - iii. Letting agencies used by local employers;
 - iv. Enforcement of Licensing controls (including staffing resources);
 - v. Approaching mortgage lenders for information on Houses in Multiple Occupation;
 - vi. Provision of an easily accessible contact number for all Houses in Multiple Occupation.
 - vii. Maintenance of gas safety standards by landlords
 - viii. Taking into account evidence of an offence involving religious intolerance in determining whether an applicant is a fit and proper person to be licensed

These are considered below.

13. Licensing controls will be enforced by the Environmental Health

Environmental Protection and Housing Standards Team with support as required from the remainder of the Environment and Licensing Team. The regime is intended to be self-supporting: additional staff time will be required but this will be supported by licensing fees.

14. The additional staffing resource mentioned above will permit the Council to have an active presence in the field and will allow it to develop liaison with partners such as the Homes and Borders Agency and internal partners such as the Council's Development Control and Revenues and Benefits teams.
15. The requirement for licensing and the penalties associated with failure to comply will be a significant deterrent to operation of HMOs that are not licensed, and so the need for information from mortgage lenders is less likely to arise than at present. However, an active presence in the field will permit checks to be carried out where an issue arises.
16. Whilst it is anticipated that licensing will reduce the likelihood of neighbours having cause for concern, details of licensed Houses in Multiple Occupation including the name and address of the landlord and any agent, will be placed on public register. This will enable neighbours to contact landlords should the need arise.
17. Landlords will be required to produce valid gas safety certificates as part of the licensing process. Annual re-licensing as proposed will allow the Council to check on an ongoing basis.
18. The Housing Act 2004 specifies certain matters that the Council must take into account, but this does not limit the range of considerations and in view of the Council's duty to promote equality it would be reasonable to take evidence of offences in relation to religious intolerance into account when determining whether an applicant was a fit and proper person to be licensed.

RISKS

19. To approve an additional licensing scheme, Cabinet must be satisfied that the statutory tests outlined above are met.
20. Additional licensing schemes adopted elsewhere have proved contentious, and the possibility of Judicial Review should not be ignored. Judicial Review bears risk of significant financial and potential reputational costs. Due regard to the evidence, the statutory tests, and the matters raised on consultation is important to minimise the risk of successful Judicial Review.
21. The Council will incur some costs and commitments of work arrangements and expenses in preparation for the launch of a scheme, which might be

rendered redundant in the event of a substantive challenge. Proposals to introduce the scheme with effect from 1 April 2015 will offset these risks.

22. The precise balance between costs and charges cannot be known with certainty. However, annual licensing and annual review of fees and charges provides for some flexibility to prevent long-term divergence in either direction.

IMPLICATIONS

Regeneration (includes Sustainability)

As set out in the report.

Author: **Graeme Bloomer, Head of Regeneration**

Finance (Includes ICT)

If adopted, the scheme would incur additional costs of administration which would be offset by income raised through the charges for licences as set out in the report. The impact on the Council's budget is therefore expected to be cost neutral.

Author: **Simon Freeman, Head of Finance**

Housing

The scheme will assist in raising and maintaining housing standards in the private rented housing market bringing them more into line with housing standards in the public housing sector.

Author: **Andrew Murray, Head of Housing**

Community Wellbeing (includes Equalities and Social Inclusion)

Houses in Multiple Occupation often provide housing for people of limited means and hence tenants may be expected to include vulnerable people and those at risk of social exclusion. Ensuring minimum standards by implementing licensing is expected to assist in addressing inequality by improving the quality of housing available for such people.

Author: **Michael Pitt Environment and Licensing Manager for Graham Branchett, Chief Operating Officer**

Governance (includes HR)

Though the Council has followed the statutory procedure and has Consulted and responded accordingly to the responses received this is a highly contentious issue. The Council should be aware that most schemes introduced have been challenged via Judicial Review proceedings. While the consultation will go some way to mitigate the risk, it cannot negate the risk to the Council of challenge.

When deciding whether to implement an HMO licensing scheme, Councillors should weigh up whether the implementation of the proposed scheme is proportionate in the circumstances, that is weigh up and balance the benefits of

the scheme as opposed to not introducing the scheme, taking into account the Public Equality Impact Duty to have regard to whether the decision would adversely affect more persons with a protected characteristic than not.

Author: **Brian Keane, Interim Head of Governance**

Background Papers

[These are papers referred to in the preparation of the report that are not attached as appendices but that are available for public or Councillor study.]

None.

Glossary of terms/abbreviations used

HMO – House in Multiple Occupation

Appendices

Appendix 1 – HMO consultation document.

Appendix 2 – HMO consultation methodology.

Appendix 3 – HMO consultation responses.

Appendix 4 – Council's response to HMO consultation representations.