

REPORT TO: CABINET

DATE: 23 MARCH 2017

TITLE: HMO ANNUAL LICENSING

PORTFOLIO HOLDER: COUNCILLOR DANNY PURTON, PORTFOLIO HOLDER FOR ENVIRONMENT

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This is not a Key Decision
It is on the Forward Plan as Decision number I005709
Call-in Procedures may apply
This decision will affect no ward specifically.

RECOMMENDED that:

- A** New or renewed licenses for Houses in Multiple Occupation under section 55 (2) (a) of the Housing Act 2004 be issued for a period of one year.
- B** The scheme of fees and charges adopted for the Council's Additional Licensing Scheme for Houses in Multiple Occupation be applied to new or renewed licenses for Houses in Multiple Occupation under section 55 (2) (a) of the Housing Act 2004.

REASON FOR DECISION

- A** There are historical differences between the Council's discretionary Additional HMO Licensing Scheme and its approach to mandatory HMO licensing. The proposed changes to the latter would eliminate the resulting anomaly.

BACKGROUND

1. Houses in Multiple Occupation (HMOs) are defined in the Housing Act 2004 sections 254 -260: for every-day purposes they may best be described as houses or flats occupied by tenants who do not form a single household where there is sharing of basic amenities, such as WCs bathrooms and facilities for the preparation and cooking of food. HMOs satisfy demand for relatively low cost housing; however the style of occupation can lead to pressure on basic amenities, a higher risk of fire, and management

challenges which can all adversely affect residents and sometimes impact on neighbours.

2. Recognising the particular issues that HMOs give rise to, successive governments have legislated to provide and refine discretionary reactive powers to impose basic standards for space, amenity, means of escape in case of fire and other fire precautions and management of existing HMOs. In enacting the Housing Act 2004 the then Central Government went further by introducing a licensing requirement for the largest HMOs, specifically those that were of three or more storeys with five or more tenants.
3. The Council implemented such mandatory licensing when the relevant legislation was brought into effect, in accord with Central Government guidance. However, relatively few dwellings in Harlow are of three storeys or more and most Harlow HMOs were not affected by mandatory licensing.
4. Following a review of issues connected with multiple occupation in Harlow in 2014, the Council resolved to adopt an Additional Licensing Scheme applying licensing requirements to other HMOs in Harlow, using powers in the Housing Act 2004.

ISSUES

5. It has reasonably been a priority for the Council to implement its Additional Licensing Scheme, since its introduction. However, that scheme is now established.
6. There is therefore now an opportunity to consider whether the Council's approach to mandatory licensing should be adapted in the light of experience with the Additional Licensing Scheme.
7. The principal differences between schemes in practice is that under the Additional Licensing Scheme, annual licences are issued at fees and charges intended to reflect the Council's costs in operating the scheme at the level of input implied by annual licensing. Under the Mandatory Scheme licenses were issued for five years, at fees that reflect this lower level of input and which were set without reference to more recent case law.
8. HMOs subject to the Mandatory Scheme are, in principal, in a higher risk category than other HMOs, but are licensed for five years. Other HMOs are in principle, in a lower risk category and are licensed annually by the Council. The Housing Act 2004 provides that mandatory licenses should not be issued for more than five years, but permits a shorter period at the discretion of the Council. The difference between the schemes is historical, but the opportunity to align them now arises as mandatory licenses will soon be due for renewal for the first time since the Additional Scheme was introduced. Annual

licensing would give the opportunity for annual review, and would give landlords the flexibility to return a HMO to single family use, should they wish to do so, after a shorter period without having paid for a long licence.

9. Central Government currently proposes to review the scope of mandatory licensing and revised legislation may require review of both the Council's Additional HMO Licensing Scheme, and its approach to mandatory licensing. However, any such national changes are not expected to be implemented imminently. A case for removing the anomalous differences between the Council's schemes therefore remains.

PROPOSALS

10. It is proposed to align the Council's approach to mandatory HMO licensing with its discretionary Additional Licensing Scheme by issuing all new or renewed HMO licenses for a period of one year, and by applying the fees and charges scheme that applies to the Additional Scheme to mandatory HMO licensing. For these purposes an HMO requiring a mandatory licence would be treated in the same way as a large HMO under the Council's Discretionary Scheme. Current and proposed fees and charges for mandatory and discretionary HMO licensing are shown at Appendix A, which shows an extract from the schedule of fees and charged approved by the Council on adoption of the budget for 2017/18.

IMPLICATIONS

Place (includes Sustainability)

As set out in the report

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

Finance (Includes ICT)

The proposed fees are calculated to recover as far as is practicable the Council's costs in annual licencing of HMOs subject to the mandatory scheme.

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

Housing

None specific

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

Community Wellbeing (includes Equalities and Social Inclusion)

More frequent review of HMO licenses may assist in ensuring that all landlords take responsibility for their premises which can be of benefit to potentially vulnerable tenants and maintain good relationships with neighbours.

Author: **Jane Greer, Head of Community Wellbeing**

Governance (includes HR)

The mandatory scheme was introduced by Housing Act 2004 [the Act] wherein HMO were to be licenced for not more than five years. The Council at that time introduced five year licences for those HMO's caught by the mandatory provisions of the Act. In October 2014 Cabinet made the decision to introduce a discretionary scheme of licensing for HMOs outside the mandatory criteria, these licences being annual.

This has led to the anomaly between the two licencing schemes, in light of the experience the Council has had with the discretionary scheme Cabinet is being requested to adopt the recommendation to enable both schemes to be operated within the same parameters. This would have the effect of treating all HMO's the same, the fact that those subject to the mandatory licensing scheme are the larger HMOs by bringing both in line will effectively give better protection to those living in the properties due to the inspection processes that can be undertaken.

Though the Council may be open to challenge on the reasonableness of the decision bearing in mind the slight increase in cost for annually licensing, by balancing the fact that those HMOs under the mandatory scheme are those at the highest risk and should therefore be scrutinised more often to ensure that the Council is maintaining its duty of care to those living within its area should mitigate the risk.

The Council should have regard to the public equality duty under s149 Equality Act 2010, in proposing that both mandatory and discretionary licences are dealt with the same will minimise disadvantages to those who share protected characteristics.

Author: **Amanda Julian, Legal Services Manager, on behalf of Brian Keane, Head of Governance**

Background Papers

Cabinet Report 16 October 2014 - Additional Licensing of Houses in Multiple Occupation

<http://moderndb/ieListDocuments.aspx?CId=121&MId=566&Ver=4>

Glossary of terms/abbreviations used

HMO – Houses in Multiple Occupation

Appendices

Appendix A – Analysis of Fees and Charges