

To: City Executive Board

Date: 11 June 2015

Report of: Executive Director for Community Services

Title of Report: Review of the HMO Licensing Scheme

Summary and Recommendations

Purpose of report: The report provides findings from a review carried out for the HMO Licensing Scheme and seeks approval from members to conduct a statutory consultation to renew the scheme in January 2016.

Key decision: Yes

Executive lead member: Ed Turner, Executive Member for Finance, Corporate Asset Management and Public Health

Policy Framework: Meeting Housing Needs and Effective and Efficient Council

Recommendation(s): That the City Executive Board:

1. Consider the Review of Licensing of Houses in Multiple Occupation 2015 and note its findings;
2. Resolve that the Review indicates that a significant proportion of HMOs in the Council's area are being managed ineffectively;
3. Instruct Officers of the Council to proceed with a statutory 10 week consultation on the basis that it is necessary to renew the licensing scheme in its entirety for a further 5 years from the 25 January 2016 (Option 3);
4. Request a future report in October 2015 setting out the results of the statutory consultation and the proposed future of the licensing scheme.

Appendices

Appendix 1 – Report on the review of the Houses in Multiple Occupation Licensing Scheme 2015.

Appendix 2 – Risk Register

Appendix 3 – Equalities Impact Assessment

Background

1. In April 2010 the Department for Communities and Local Government issued guidance that provided Local Authorities with the ability to designate areas, containing HMOs to be subject to additional licensing without the need for approval from the Government.
2. The guidance set out a condition that required all Council's considering this approach to consult with all persons, likely to be affected by the scheme, for a period of not less than 10 weeks.
3. In October 2010 Oxford City Council designated the whole of its area as subject to additional licensing for HMOs under Part 2 of the Housing Act 2004 (hereafter the Act).
4. The scheme was introduced over 2 years with Phase 1 commencing on the 24 January 2011 and Phase 2 on the 30 January 2012. The scheme will expire 5 years from these commencement dates.
5. The Council adopted an approach of annual licensing so that the scheme could be structured in such a way that its costs are covered by the fees received for delivering the service. An annual licence also provided the opportunity to improve compliance through more regular checks of items such as gas safety, electrical safety etc..
6. Within the Act there is a legal requirement to review the scheme "*from time to time*" following its operation. This review has now been completed and the full report is provided as Appendix 1 to this report.
7. Phase 1 of the scheme is due to expire on the 24 January 2016 so in order for the Council to consider the future of the scheme it must undertake the same process it did when it originally designated the area in 2010.
8. The Council must therefore consider a series of factors as set out in Sections 56 and 57 of the Housing Act 2004 and identify which HMOs it might wish to be covered by a scheme and consult with those people who are likely to be affected by the licensing scheme.

Legal Issues

9. The legal issues relating to this report are set out within the Housing Act 2004.
10. Firstly, under section 60 of the Act, the Local Authority must “*from time to time*” review the operation of the designation and if it is appropriate to do so then they may revoke the designation.
11. If they do not revoke the designation then the scheme will lapse after the period of 5 years from the date the designation was made.
12. The Additional Licensing scheme in the City was phased over two years for a period of 5 years. This creates a situation where Phase 1 and Phase 2 will expire on different dates (Phase 1 on the 24 January 2016 and Phase 2 on the 31 January 2017).
13. Under section 60(2) of the Act the time must be no later than five years after the date on which the designation comes into force.
14. The proposal would be that the new designation would commence on the 25 January 2016 for a period of 5 years and include a provision for Phase 2 of the original scheme to commence on the 1 February 2017 with an expiry date of the 25 January 2021. This would align the two phases of the scheme and reduce the financial burden associated with having to revoke Phase 2 of the scheme and re-designate it following expiry in 2017.
15. In order for the Council to ‘renew’ the scheme it must proceed through the statutory process as laid out in Section 56 and 57 and the guidance issued under the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2010.
16. Section 56 of the Act places requirements upon the Local Housing Authority when considering a designation for additional licensing of HMOs, in that the Council must:
 - Consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public; and

- Take reasonable steps to consult with persons who are likely to be affected and consider any representations made in accordance with the consultation and not withdrawn; and
 - 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 (these codes relate to University managed accommodation).
17. Section 57 provides further considerations for the Local Authority in that they should ensure that:
- Exercising the designation is consistent with the authority's overall housing strategy; and
 - Seek to adopt a coordinated approach in connection with dealing with homelessness, empty properties and anti-social behavior affecting the private rented sector as regards combining licensing with other action taken by them or others; and
 - 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; and
 - 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).
18. The DCLG General Approval provides the condition that any consultation period for the proposed designation should not be less than 10 weeks.
19. In February 2010 the DCLG produced general guidance around the approval steps for additional and selective licensing designations in England.
20. This document provides examples of properties being managed "*sufficiently ineffectively*" including:
- Those whose external condition and curtilage (including yards and gardens) adversely impact upon the general character and amenity of the area in which they are located;
 - Those whose internal condition, such as poor amenities, overcrowding etc. adversely impact upon the health, safety and welfare of the occupiers and the landlords of these properties are failing to take appropriate steps to address the issues;

- Those where there is a significant and persistent problem of anti-social behavior affecting other residents and/or the local community and the landlords of the HMOs are not taking reasonable and lawful steps to eliminate or reduce the problems; and
- Those where the lack of management or poor management skills or practices are otherwise adversely impacting upon the welfare, health and safety of residents and/or impacting upon the wider community.

Review of the licensing scheme in Oxford 2015.

21. The review of the Scheme has been completed and the full report attached as Appendix 1.
22. A summary of the key findings and how these reflect the considerations set out in Section 56 and 57 of the Housing Act 2004 are set out below.

Key Findings from the review.

23. The increase in the size of the Private Rented Sector (PRS) has been the most significant change in Oxford's housing market in the last ten years which has resulted in a considerable growth of HMOs, now estimated at circa 6,900.
24. The Council's ambition "to make Oxford a world-class City for all its citizens is driven through the delivery of a number of corporate priorities
 - a. A vibrant and sustainable economy
 - b. Meeting Housing Needs
 - c. Strong and active communities
 - d. Cleaner Greener Oxford City Council
 - e. An efficient and effective Council
25. The Housing Strategy 2012-2015 is a key driver for the delivery of these corporate priorities, principally "Meeting Housing Needs" but also in supporting the economy through housing provision of current and future residents and workers and also, through ensuring communities have stable and safe places to live.

26. The overall improvement of HMOs through Additional Licensing is seen as a key contributor to the priority of Meeting Housing Need so much so that the Council set corporate targets relating to the number of HMO licence inspections carried out and an improvement of conditions in the Private Rented Sector.
 27. The introduction of Additional Licensing of HMOs in 2011 provided a level playing field for all landlords and agents and has seen the Council adopt a multi-agency approach to dealing with the issues associated with the sector.
 28. Operational partners include various teams within the Council, Thames Valley Police, Oxfordshire Fire and Rescue Service, Oxfordshire Health Service and the HM Revenues and Customs.
 29. The relationship with private landlords, agents and community groups has also been developed with regular events and meetings being held by the Council and the introduction of a landlord accreditation scheme.
 30. Accreditation is a free service and so far 94 landlords and agents have become accredited by the Council. 33 landlords became accredited in 2014 when the new fee structure and longer licence was introduced.
 31. Despite this many landlords remain disengaged until formal action is pursued by the Council and these non-regulatory interventions cannot be solely relied upon to address the issues with HMOs.
 32. During the life of the Scheme the Council has been able to licence 3,440 HMOs and over 7,000 licence applications for new and renewed licences have been processed by the Council and on average 80% of applicants had to be reminded to submit an application. 56% of applicants submitted fully completed applications with the need for additional information.
 33. Around 90% of HMOs did not meet minimum standards and approximately 80,000 licence conditions had to be attached to licences to maintain these standards. 49,000 discretionary conditions were required on licences to deal with a lack of acceptable minimum standards and management; 12,600 for fire safety; 35,000 for Health and Safety; and 1,600 for amenities and facilities.
 34. Licences required, on average, a minimum of 4 additional conditions, over and above the mandatory conditions, requiring work to be carried out to improve the standard of HMOs in the City.
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35. During 2013/14 the Council conducted around 1,400 compliance visits. 26% of licences had outstanding conditions and 9% required additional conditions. In 2014/15 this had rose to 30% with outstanding conditions and 11% requiring additional conditions.
36. Over 19,700 visits have been carried out to HMOs and the Council has responded to approximately 2,700 complaints relating to living conditions and management issues. Over a 1,000 complaints have also been received regarding issues of environmental crime and anti-social behaviour.
37. 42 HMOs have also required conditions attached restricting the use of unlawful dwellings found at the property.
38. Around 90HMOs had legal action commenced by the Council with many more being subject to investigations for breaches of the legislation. Of those subject to legal action,38 have resulted in prosecutions and 26 simple cautions being issued. A further 30 HMOs are currently under formal investigation for potential legal action.
39. The Council has had to take over control of the management of 5 properties where the landlord has failed to licence the property as a HMO. One Rent Repayment Order has also been issued which required the owner of the HMO to repay over £5,000 in housing benefit.

Option Appraisal

40. The review report sets out the detail of the option appraisal exercise undertaken. In broad terms, 3 options were considered:
- Option 1 - Do nothing. Let the current scheme expire and carry out statutory action only.
- Option 2 - Renew the scheme to cover certain parts of the City.
- Option 3 - Renew the scheme in its entirety to cover the whole of the City.
41. The three options were subjected to an assessment against decision rules and objectives and the detailed assessment can be found at page 39 of the Review. The overall results indicated that Option 3 – Renew the scheme in its entirety was the most appropriate course of action. The results of this appraisal can be seen in the table below.

Table – Results of Option Appraisals

Assessment Method		Option 1		Option 2		Option 3	
		Rank	Score	Rank	Score	Rank	Score
1	Decision Rule Assessment	3 rd	8	2 nd	12	1 st	14
2	Objectives Assessment (un-weighted)	3 rd	11	2 nd	25	1 st	34
3	Objectives Assessment (weighted)	3 rd	26	2 nd	55	1 st	72

42. The main reasons supporting the implementation of Option 3 are as follows.

43. The Private Rented Sector in Oxford has grown considerably in Oxford and the City is the most expensive place to live in terms of house prices. This puts a lot of young and vulnerable tenants outside of the home ownership market and places a burden on the private rented sector. Sharing accommodation is the only viable option for a large proportion of young and low income households and there has been a notable increase in the number of families with young children occupying HMOs.

44. The estimated number of HMOs has followed this pattern since the introduction of licensing. This suggests that this type of scheme does not impact on a reduction of this type of accommodation in the sector.

45. The current spread of HMOs is not concentrated in one particular area and the issues regarding this type of accommodation are widespread. Partial licensing of HMOs would likely result in an increase of HMOs in areas which were not subject to licensing and leave the Council with limited options for dealing with these properties.

46. Service requests decreased in the early years and it appears that standards in HMOs were improved but there are indications that certain issues relating to this type of accommodation are gradually increasing. More work needs to be done to maintain improvements and increase effective and responsible management of HMOs.

47. A large proportion of applicants need reminding to submit the necessary documentation and compliance with licence conditions are well below acceptable levels.

Financial Issues

48. When originally setting the fees and charges structure for the licensing scheme the Council had to take account of the staff costs, training, administration and publicity and that it was not allowed to use licensing fees to raise revenue for other projects or areas of work.
49. The original financial structure of the Scheme was designed to be 'cost neutral' to cover the costs mentioned above and to negate the need to use any revenue funding to support the delivery of the Scheme.
50. The Council regularly reviewed the fees and charges structure of the Scheme to ensure that this remained the case.
51. During year 1 the Council pump primed the scheme with an investment of £180K. This supported the financial implications of administering such a scheme and was recouped in year 2 effectively making the Scheme self- financing.
52. The income figures for the life of the scheme so far are shown below.
- 2010/11 - £84.2k
 - 2011/12 - £573.8k
 - 2012/13 - £565.3k
 - 2013/14 - £503k
 - 2014/15 - £675k
53. The Scheme is still in operation and the forecast is, that based on these income levels it will result in a cost neutral situation up to the end of January 2017.
54. If the Scheme were renewed then the suggested approach of pulling the original two phases together as one will have potential financial benefits of the reducing costs associated with administration and publicity. These savings could lead to a revised fee structure offering further incentives to landlords and agents who licence their HMOs. Further details on the potential financial costs and benefits of renewing the Scheme will be considered in the October report.

Conclusion

55. It is clear from the findings of the review that there have been some positive successes with the introduction and delivery of the HMO licensing scheme. Standards and management of HMOs are better than they were when the scheme was introduced, however there is still more that needs to be done to maintain these standards and build upon the successes of the Scheme. There is a growing Private Rented Sector and an increase in the number of HMOs in the City so constant pressure needs to be applied to ensure that standards do not spiral into decline.

Level of risk - a risk register is attached as Appendix 2.

Environmental Impact

56. There are a number of environmental impacts relevant to this report. The option of 'do nothing' could result in significant environmental impacts, particularly when the Council will have very limited ability to maintain and improve conditions. Issues around energy efficiency and thermal performance are likely to be out of the control of the Council so the energy performance of HMOs will decline. The failure to renew the Scheme may also impact on the ability to manage and maintain waste management issues in HMOs and as such household recycling rates are likely to be affected. The control of the impact to deal with waste management will be significantly reduced without the ability to take action using the powers associated with licensing of HMOs. This is likely to result in a spiral of decline and an increase in environmentally related service requests.

Equality Impact Assessment– An EIA is attached as Appendix 3.

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List of background papers: Report on the review of the licensing of Houses in Multiple Occupation 2015.