

Report of: Head of Environmental Development
To: City Executive Board
Date: 18th October 2010

Item No:

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Title of Report: Additional Licensing Scheme for Houses in Multiple Occupation in Oxford.

Summary and Recommendations

Purpose of report: This report contains amendments to and clarification of the proposed additional licensing scheme for Houses in Multiple Occupation (HMO) in Oxford as approved by the City Executive Board on 22 July 2010.

Key decision: No
Executive Lead Member Councillor Joe McManners
Report approved by: Tim Sadler
Finance: Jacqueline Yates
Legal: Jeremy Thomas
Policy Framework: More housing, better housing for all

Recommendation(s):

That the City Executive Board:

1. Withdraws resolutions 1, 3, 5 and 7 made on the 22nd July 2010.
2. Affirms resolutions 2, 4 and 6 made on the 22nd July 2010.
3. Designates the whole of the City as subject to additional licensing under section 56(1)(a) of the Housing Act 2004 in relation to all three storey Houses in Multiple Occupation that contain three or four occupiers and all two storey Houses in Multiple Occupation that contain five or more occupiers. The Designation comes into force on the 24th January 2011 and will last for 5 years.
4. Designates the whole of the City as subject to additional licensing under section 56(1)(a) of the Housing Act 2004 in relation to all two storey or single storey Houses in Multiple Occupation that contain three or four occupiers and all self contained flats that are Houses in Multiple Occupation, irrespective of the number of storeys, but, so far as concerns section 257 Houses in Multiple Occupation, limit the Designation to those that are mainly or wholly tenanted, including those with resident landlords. This second Designation will come into force on the 30th January 2012 and will last for 5 years.
5. Approves the fees set out in tables 1, 2 and 3.
6. Recommend to Council the release of pump prime funding in 2011/12 of £180k on the basis that it is repaid over the subsequent 3 years of the Medium Term Financial Strategy (MTFS) and that the budget framework be amended to include the figures in table 4.

Introduction

1. On 22nd July 2010 the City Executive Board (CEB) approved the additional licensing scheme for HMOs in Oxford. The report of the Head of Environmental Development which was considered by the CEB is attached as appendix 1 (including the original appendices to that report). The resolution made by the CEB is attached as appendix 2. The CEB is now asked to read this report in conjunction with the earlier report and all its appendices (including the full responses to the consultation exercise undertaken prior to that earlier report).
2. The whole of the City was designated for the purposes of licensing and the scheme covered every HMO apart from certain poorly converted self contained flats. The commencement date for the scheme was the 25th October 2010 and the statutory public notifications were made as necessary.
3. Feedback from certain landlords and agents, and their solicitors, has resulted in officers believing there to be a benefit in clarifying certain aspects of the scheme and making improvements where necessary. In this report "landlord" is intended to refer to, and include, those who would be liable to obtain licences for HMOs.

Clarification of the phasing of the licensing process

4. In the 22nd July 2010 CEB report, at Paragraphs 28-36, officers proposed a 'phasing' approach to licensing. This approach was intended to highlight the Council's proactive approach towards those HMOs where landlords did not themselves submit applications without prompting. Further, the only reason for any phasing was the very considerable administrative and logistical difficulty of licensing the entire HMO stock all at once. Officers did not consider it was reasonably practicable to receive, process and issue licences for an estimated 3495 premises, in a very short timescale, particularly when the second recommendation made in the report was that the Council would not issue a licence without an inspection of the property.
5. However, officers now believe that the phasing as proposed in the original report introduces the possibility for confusion and uncertainty for landlords. In particular, a point has been raised by solicitors for a group of landlords that, after the designation comes into force, if a landlord of a two storey HMO does not apply for a licence (whether or not it is also issued), it will be unable to serve a notice seeking possession against an assured shorthold tenant (under section 21 Housing Act 1988), and will be unable to recover possession on the 'no fault' basis provided by that section. (This point was not raised by landlords in the formal consultation).

6. Although officers consider that there would be nothing preventing any landlord of such an HMO from applying for a licence from 25th October 2010, and note that the plain reading of the Designation itself does not suggest a 'phased' approach, they recognise that this was not the basis on which the CEB was asked to consider the proposed Designation, and that there is potential uncertainty. Therefore, it is proposed to withdraw the current Designation and make 2 new Designations which provide certainty as to what will require a licence and when. This will require the withdrawal of resolutions 1, 3 and 7 of the 22nd July 2010 CEB report.
7. The Council has been consistent in stating that there is a demonstrable need to licence every HMO in the City and that the higher risk properties should be licensed first and so it is proposed to make the new Designations accordingly.
8. It is proposed that the remaining 3 storey HMOs and the larger 2 storey HMOs occupied by 5 or more people should be targeted first. It is proposed that these premises would be included in the first Designation. The rationale for this has been set out in report to the CEB dated 22nd July 2010.
9. The remainder of the HMO stock would be covered by the second Designation which would commence 12 months after the first Designation. The reason for this is that it has been estimated that it would take 12 months to issue licences for the higher risk HMOs, after which resources would become available for the initial licensing of other classes of HMO. The reason for the making this Designation now is two-fold. First, because the evidence demonstrates a compelling need for licensing (which has persisted over a number of years, such that there are no reasons to consider it may change), and the only reason for not implementing it earlier is the administrative and logistical difficulty already referred to. Second, because it will give to landlords of those HMOs a considerable period of time in which to prepare for licensing (and what it will require) or, should they so choose, re-ordering their affairs so that the property ceased to be an HMO.
10. If the CEB accept this recommendation and resolves accordingly, landlords of each category of HMO will now know that the legal onus will be on them to apply for a licence from either 24th January 2011 or 30th January 2012.
11. The enforcement of the requirement to obtain a licence will be carried out in accordance with the Council's published Enforcement Policy. It is anticipated that landlords will wish to apply for a licence in good time to avoid the possibility of legal action and so will benefit from the ability to give notice for possession under section 21 of the Housing Act 1988.

Consultation

12. In the 22nd July 2010 CEB report, at paragraphs 12-14, a brief summary of the responses to consultation was set out. The appendices to that report record the responses in more detail. The CEB is asked carefully to reconsider the full results of the consultation, and is reminded that although there was strong support for the scheme overall, the vast majority of landlords were opposed to designation for the reasons as recorded in those appendices. The CEB is reminded that it is required fully to have regard to all of the responses to the consultation in considering this report, and the recommendations now made.
13. As the recommendation to the CEB is formally to withdraw the existing Designation and make 2 new Designations, officers have considered whether there is any requirement to embark on a new stage of consultation prior to consideration of the recommendation to make the new Designations. Officers do not consider there is any legal requirement to enter into any further consultation for the following reasons:
 - (a) the Council did not consult on the basis that it proposed to have a 'phased' designation. Rather, it consulted on the *principle* of designation for all HMOs for the City's entire area. Therefore, it could not be said that any new decision of the CEB is something 'new' which has not been consulted upon.
 - (b) There is no reason for supposing that any new or additional consultation might result in new material which might have any effect on the CEB's decision; the pros and cons of additional licensing in October 2010 are exactly the same as when the consultation was entered into (and there is no reason to suppose that the factual background could be any different).
14. It is a matter for the CEB whether it is satisfied there is neither any requirement nor any purpose in entering into any further consultation.

Conditions attached to HMO licences

15. In the 22nd July 2010 CEB report, at Paragraphs 61-64, the question of proposed licence conditions was considered. It is noted that the proposals set out did not form part of a resolution for the CEB, but explained how officers proposed to operate the licensing system. That remains the position.

16. Further consideration has been given to the proposal to attach standard conditions to all HMO licences, in particular for thermal and energy efficiency (and after a query has been raised by the solicitor for a number of landlords). In addition, recent cases taken by the Residential Property Tribunal Service have ruled that local authorities cannot place standard conditions on every HMO licence and that each licence must be considered on its merits.
17. The impact of these matters is that officers will have to consider each licence on a case by case basis and only attach a licence condition where it is necessary to do so. Any landlord aggrieved by any conditions attached has a right to challenge them.

Fees

18. In the 22nd July 2010 CEB report, at Paragraphs 53-60, the proposed fee structure was considered. In particular, the proposal was for differential fees to be charged in certain circumstances. The solicitor for a group of landlords has challenged the legal basis for this. The advice the Council has received is that neither section 63 of the Housing Act 2004 nor general law prevents the Council from charging such differential fees, where there are rational reasons for doing so. Officers remain of the view that there are such reasons. There are benefits in this approach for responsible landlords, who are more likely to support a differentiation in fees so that the financial burden falls more on the non-compliant, than on the compliant.
19. Officers do consider that the term "Penalty Clauses" may give the impression that the Council is levying a penalty fee, rather than the Council rightly recovering the costs it has incurred due to carrying out additional work. As the Council is entitled to recover all the costs incurred in licensing, it is proposed to rename the Penalty Clauses as "Additional Charges". This better reflects their intended function and purpose. This will require the withdrawal of resolution 5 of the 22nd July 2010 CEB report.
20. The proposed fees are as follows:

Table 1

Initial application fee for a 3 storey HMO and 2 storey HMOs with 5 occupants	£470 + £20 for each additional room
Initial application fee for 2 storey HMO with 3 or 4 occupants	£362
Annual renewal fee for 3 storey HMO and 2 storey HMOs with 5 or more occupants	£172
Annual renewal application fee for 2 storey HMO with 3 or 4 occupants	£150

21. It is proposed that the following additional charges are added to the fee structure:

Table 2

Additional Charges	Proposed fee
In the event of property being found by officers surveying for HMOs a finders fee will be added unless the landlord is able to demonstrate that they became the owner of the HMO within the previous 12 weeks	£163
Additional charge to be added following second letter sent chasing licence application (this may be in addition to fees above)	£35
Additional charge to be applied in the event of a reinspection being required during the renewal process as a result of poor management for a 3 storey HMO and 2 storey HMOs with 5 or more occupants	£130
Additional charge to be applied in the event of a reinspection being required during the renewal process as a result of poor management for a 2 storey HMO with 3 or 4 occupants	£86
Additional charge for missing an appointment during inspection process	£86

22. The scheme should contain incentives for good landlords and encouragement for portfolio holders to apply. The following proposals are recommended:

Table 3

Accredited Landlords	A fee reduction of 10%
Multiple Applications - If you own or manage more than one licensable HMO, you are entitled to the following reductions per property for the initial application	2-19 properties: £20 20 or more properties: £30

Financial implications

23. In the 22nd July 2010 CEB report, at Paragraphs 66-72, the financial implications of the scheme were set out. The proposed activities under the scheme have not changed other than being put back 3 months and the purpose of this report is clarification rather than the implementation of any substantive changes to the operation of the scheme. The proposed budget profiling has been amended to take the delay into account. Figures have been based upon the best intelligence available but there remains considerable scope for variation largely due to the many unknowns including landlord and agent response.

24. Whilst the scheme will be self financing over 6 years, pump prime funding is required in 2011/12. CEB is therefore asked to recommend to Council that this funding is made available on the basis that it is repaid over the subsequent 3 years of the MTFs.

Table 4 – Estimated budget

Budget Year	10/11	11/12	12/13	13/14	14/15	15/16	16/17	Total Scheme
Licence Fee Income	63,044	429,739	634,211	706,890	726,914	738,357	408,706	3,707,861
Expenses	44,136	610,087	610,087	610,087	610,087	610,087	610,087	3,704,658
Surplus / (Cost)	18,909	(180,348)	24,124	96,803	116,827	128,270	(201,381)	3,204

25. A criticism has been made by the solicitor for a group of landlords that the Council has unlawfully budgeted to make a profit. Officers do not consider this is correct. The CEB is reminded that the Council may not use the power to charge fees under s.63(3) Housing Act 2004 as a revenue raising power. Officers fully understand this. Fees have been set at levels which they reasonably believe will be sufficient to cover the total cost of operating the scheme. This is, necessarily, a difficult exercise where judgments have to be made as to the future (including as to the numbers of HMOs as will require registration, and the numbers of officers needed to be engaged to undertake the licensing scheme).

26. Officers confirm that the Council will, as is its practice with all areas of licensing, monitor fee income and expenditure (and likely expenditure in the future), and should any adjustments need to be made, they will be as the scheme progresses. This would, of course, include increasing as well as decreasing fees, if any surpluses arise which exceed the total cost of the scheme. If there are surpluses, these will be taken into account in setting future budgets, so as to preserve the principle that fees should meet expenditure only

Risk

27. The risk register has been updated to take into account the impact of the clarifications and the new timescales.

Climate change/environmental considerations

28. There are no changes to the climate change/environmental considerations identified in the 22nd July 2010 report.

Equalities impact

29. There are no changes to the equalities impact assessment carried out for the 22nd July 2010 report.

Legal implications

30. Counsel's opinion has been sought on these matters and his advice has been taken and incorporated into this report.
31. Once an additional licensing scheme has been approved there are specific requirements to issue notices to publicise the scheme and ensure landlords are made aware of it. The Council will be required to repeat the actions it has recently carried out. Formal withdrawal of the existing Designation will also need to be publicised.
32. There is a requirement that the Council must from time to time review the operation of any Designation made by them and if following a review they consider it appropriate to do so, the Council may revoke the Designation.

Recommendations

33. The City Executive Board is recommended to:
- (a) Withdraw resolutions 1, 3, 5 and 7 of the 22nd July 2010.
 - (b) Affirm resolutions 2, 4 and 6 of the 22nd July 2010.
 - (c) Designate the whole of the City as subject to additional licensing under section 56(1)(a) of the Housing Act 2004 in relation to all three storey HMOs that contain three or four occupiers and all two storey HMOs that contain five or more occupiers. The Designation comes into force on the 24th January 2011 and will last for 5 years.
 - (d) Designate the whole of the City as subject to additional licensing under section 56(1)(a) of the Housing Act 2004 in relation to all two storey or single storey HMOs that contain three or four occupiers and all self contained flats that are HMOs, irrespective of the number of storeys, but, so far as concerns section 257 HMOs, limit the Designation to those that are mainly or wholly tenanted, including those with resident landlords. This second Designation will come into force on the 30th January 2012 and will last for 5 years.
 - (e) Approves the fees set out in tables 1, 2 and 3.

- (f) Recommend to Council the release of pump prime funding in 2011/12 of £180k on the basis that it is repaid over the subsequent 3 years of the Medium Term Financial Strategy (MTFS) and that the budget framework be amended to include the figures in table 4.

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List of appendices

Appendix 1 – City Executive Board report 22nd July 2010
Appendix 2 – Resolution of the City Executive Board 22nd July 2010
Appendix 3 – Risk Register