

**To: The Housing Panel**

**Date: 9 November 2016**

**Report of: Head of Planning & Regulatory Services**

**Title of Report: An update on HMO Licensing**

## Summary

**Purpose of report:** To update the Housing Panel on the current position regarding HMO Licensing and the future plans for the service.

**Key Decision:** No

**Executive lead member:** Councillor Alex Hollingsworth, Board Member for Planning and Regulatory

**Report author:** Ian Wright, Environmental Health Service Manager

**Policy Framework:** Meeting Housing Need

Appendices to report:

Appendix 1 – Criteria for Longer Licences

Appendix 2 – HMO Licence Applications Fees and Charges

Appendix 3 – Enforcement statistics

## **Background**

1. The Council has been licensing HMOs since April 2006 and in 2011 it extended licensing to every HMO in the City. The scheme was renewed this year and it will run until 2021. The purpose of this report is to update the Panel on how the scheme works and advise them on future issues.

## **The application process**

2. The application process for licensing an HMO is governed by legal requirements set out in the Housing Act 2004 and supporting regulations. Currently the applicant completes an application form, pays the appropriate fee and signs a statutory declaration.

3. In order for the applicant to benefit from a longer licence at a lower fee the Council attached certain criteria (set out in Appendix 1) to licence applications to determine the length of licence appropriate. This approach was adopted to encourage professionalism in the sector and to provide an incentive to good landlords who were taking the responsibility to licence seriously. The fees attached to licences reflect the amount of time the Council spends dealing with the different type of licence applications.
4. The responsibility to make an application valid falls with the owner of the HMO. Where landlords do not take this responsible approach significant delays in the process can be caused. These delays are experienced with both new and renewal applications and the Council regularly spends time chasing applicants who have made invalid applications. This is reflected in the fees as shown in Appendix 2.
5. The Council currently operates an online application system and proposals are being considered to change and upgrade the system to improve this process to make it easier for landlords and reduce the burden on the Council in ensuring an application is made valid. Discussions with other local authorities such as the London Borough of Newham have demonstrated that this is a national problem, with very few software companies developing bespoke programmes for what is a relatively small market. There have been delays in the processing system for some time due to a variety of reasons. A planned upgrade by our existing supplier was not successful and changes in personnel have resulted in a number of backlogs that have had to be cleared.

#### **Fit and proper tests for landlords & agents**

6. All licences holders must be “fit and proper persons” which is defined in the Housing Act 2004. The Council does not consider a person to be “fit and proper” if they have been convicted of an offence under housing legislation or where there is evidence to suggest they have committed other serious offences such as fraud, dishonesty, drugs, violence or sexual offences. Where a person has been convicted of a relevant offence then he/she is considered to be not fit and proper for a period of five years from the date of conviction and as such they are not able to hold an HMO licence or be the manager of an HMO. Applicants are screened during the process and advised that their application will be refused and they will have to provide a suitable alternative licence holder and manager who is not directly associated with the person convicted.
7. In cases where a suitable alternative licence holder/ manager is not provided the Council will proceed to make an Interim Management Order which transfers the responsibility to collect the rent and manage the HMO to the Council. This type of action is usually taken as a last resort but it has been taken 6 times by the Council recently and there are a number of ongoing cases where this course of action may be appropriate.
8. Should any issues arise or new information be discovered after the licence is issued, the Council can revoke the licence. This is usually where it is found that the applicant has provided false or misleading information or made a false declaration.

#### **What we are doing to find HMOs**

9. The Corporate Target for 2016/17 is to licence 70% of the estimated HMOs in the City and the current performance is 73%. The estimated figure of 5,240 has been

derived from the Census data, although in reality it will be an ever changing figure. There is no definitive list of HMO addresses and so the Council has to actively seek out potentially unlicensed HMOs. Whilst there are many compliant and broadly compliant landlords there are a considerable number of landlords who passively or actively avoid licensing. In addition, the nature of HMOs means that some HMOs are in constant use whereas others, particularly smaller HMOs, will be created and then revert back to use as a dwelling house.

10. The Council targets proactive visits based on a comparison of data obtained from Census information and that held on the Council's system. A desk top check of data held by the Council on the property database, Electoral register and Council tax system is carried out to determine if there are any further indications that the property may be multi occupied. This has enabled the Council to identify areas within the City where there are higher numbers of potential unlicensed HMOs. The properties identified are categorised and prioritised by size, previous history etc. and officers conduct unannounced visits to assess the situation.
11. The Council takes reports about alleged HMOs extremely seriously and has a "report it" facility on the website. All reports made by the general public, residents, councillors, and other services such as the Community Response Team and the Police are checked against the Council's records. Most cases require a site visit to determine if the property appears to be occupied as an HMO.
12. So far this year this approach has resulted in 54 previously unlicensed HMOs being required to licence and 25 successful prosecutions.

### **Planning and HMOs**

13. Many people get confused with planning controls and HMO licensing. The reality is that the two systems are completely separate and not dependant upon each other. They even have different definitions of what types of HMO are controlled. It is not legally possible to refuse to grant a licence because an HMO does not have planning permission and the DCLG view is that the aims of both sets of legislation are different and they have no intention to change the legislation. This means that there have been instances where the Council has had to issue a HMO licence and then serve a planning enforcement notice to stop the use of the property as an HMO.
14. The Council has taken steps to integrate the functions as far as practicable. Following the last restructure the HMO and Planning Enforcement functions are now in the same service which has improved communication and joint working. There are also questions on the HMO licence application form regarding the planning history of the property. If it is not clear that the property was in use as an HMO before 2012 then it will be referred to Planning Enforcement for investigation. Similarly, any unlicensed HMOs discovered by the HMO Enforcement Team will be referred to Planning Enforcement.
15. The issue in Oxford is particularly acute because of the introduction of the Article 4 Direction in 2012 to create a better balance of dwellings and take away the permitted development right to move from a C3 dwelling house to a C4 small HMO across the city. HMOs with 7 or more tenants are in a different Use Class and have always required planning permission. Planning policy HP7 on HMOs was introduced after consideration of a range of policy options applied by other local authorities and the rule of no more than 20% of HMOs within 100m either side of the application

address was thought to be the best solution at the time. Along with the Local Plan, the HMO Policy is currently being considered for review.

16. When calculating the proportion of HMOs in any given neighbourhood the Development Management Teams will take into account the number of HMOs on the database that have been licensed in the street. They will consult with the HMO Enforcement team if the case is borderline. The information they have access to is available on the public access part of the Council's website.

### **When we take enforcement action & the types of action available**

17. The Council is extremely proactive in enforcement and will take legal action where there is a clear breach of legislation. Subject to legal requirements, we will ensure that we exercise our regulatory activities in a way which is proportionate; accountable; consistent, transparent and targeted. This has resulted in the council being one of the lead authorities for HMO prosecutions in the UK.
18. The Council has a variety of duties and powers to deal with HMOs, predominantly under the Housing Act 2004. The legislation places a responsibility on the Council, in certain circumstances to take action and also provides powers (discretion) to act in other matters.
19. Where the Council finds clear evidence of someone breaching the HMO requirements it will commence with a formal investigation. This includes a risk assessment using an enforcement matrix which assists the Council in determining which course of action is appropriate. In the most serious cases, where there is clear evidence of a breach and it is in the public interest to do so, the Council will proceed with a prosecution. This will typically include cases where an owner has failed to licence their HMO, comply with management responsibilities or failed to comply with licence conditions.
20. In cases that impact on the health and safety of the occupants the Council will serve a notice or order where there is a serious risk of harm to health. In cases where the risk is not so serious the Council may serve a notice, for which there is a charge or order or require these matters to be addressed through licence conditions. Licence fees will be increased if this latter approach is adopted.
21. Another power the Council will use, where appropriate include Rent Repayment Orders, which enable the Council to claim back any housing benefit paid to tenants during a 12 month period when they were occupying an unlicensed HMO. Since the inception of the scheme the Council has claimed back around £22,000. Similar provisions exist for tenants to claim rent back after the Council has successfully prosecuted a landlord and the Council assists those tenants that wish to take this action.
22. Appendix 3 provides some statistics on the enforcement activity carried out in relation to HMOs since 2011.

### **Licence conditions that can be used and compliance checks**

23. A licence must include the mandatory conditions set out in the Housing Act 2004, which cover gas and electrical safety, safety of furniture, the provision of smoke alarms and supplying to the occupiers of the house a written statement of the terms on which they occupy it. A licence may also include such conditions as the Council consider appropriate for regulating the management, use and occupation of the house concerned, and its condition and contents. Additional conditions were

included on over 90% of all the new licences issued because the council decided to inspect every HMO before issuing a licence. They are used to require property repairs, additional facilities, to prohibit rooms that were too small and tidy unsafe gardens. Landlords can challenge additional conditions when the licence is at the draft stage and can appeal to the First Tier Tribunal if the condition is imposed on the licence.

24. Compliance visits are typically carried out three months before a licence is due to expire and it is not unusual to find non-compliance with conditions. In cases such as this the Council adopts a risk based approach and may if appropriate carry licence conditions over onto the next licence with a shortened completion date. In more serious cases the Council will commence formal action. Failure to comply with conditions also impacts on the fees charged to the landlord as further compliance inspections are required.
25. The Council measures full compliance rates and has a target of 50%. So far this year the average is 46%. In many cases the outstanding issues are minor or works are in progress, so a prosecution is not warranted, but nevertheless it is an indication that pressure must be maintained on the sector to secure improvements.

#### **Working with stakeholders – who we work with & when**

26. The HMO Enforcement Team work with a range of stakeholders in a variety of ways. There are regular Landlord Information Exchanges to update all landlords and agents and the Council also operates an accreditation scheme which is linked to the licensing scheme and all landlords applying for accreditation are required to attend a one day training session organised by the Council.
27. The Oxford Community Forum was set up to work with the Asian landlord community and meets quarterly to discuss HMO licensing issues and the private rented sector.
28. The HMO Enforcement Team also attend residents associations meetings when requested and have been involved in area walkabouts.

#### **New legislation – Housing & Planning Act 2016**

29. The Housing and Planning Act 2016 is a new piece of legislation aimed at, amongst other things, rogue landlords and property agents. It provides new powers for the Council to clamp down on rogue landlords and persistent offenders. The main provisions appropriate to HMOs are those relating to banning orders; a database of rogue landlords; extending the ability to obtain rent repayment orders and introducing financial penalties so the Council can issue and retain fines of up to £30,000. The full range of powers have not yet taken effect and they will require commencement orders and regulations which are likely to be issued in October 2017. The Council are involved in the DCLG select working groups helping to develop and implement the new powers.
30. The Government are also consulting on proposals regarding extending mandatory licensing for Houses in Multiple Occupation following a technical discussion paper last year. DCLG has launched a further consultation on the detail of the proposals. In summary they are proposing to extend mandatory licensing to include all large HMOs regardless of the number of floors, and including flats above and below high risk business premises. The person threshold of 5 people in 2 households will remain unchanged. The Government wish to clarify that no one should sleep in a room in a licensable HMO that is smaller than the Housing Act 1985 overcrowding

standard of 6.5sq m. This will be done by inserting a new mandatory condition into the licence. They are however seeking views on how adults occupying rooms with children should be treated.

### **What happens at the end of the current scheme**

31. The current scheme is due to expire on the 24<sup>th</sup> January 2021 and if the Council does not renew the designation before then the scheme will lapse. At that point only larger HMOs would require a licence. Within the Act there is a legal requirement to review the scheme “*from time to time*” following its operation. This review will need to take place before the expiry of the scheme.
32. If the Council proposes to ‘renew’ the scheme it must proceed through the statutory process as laid out in the Housing Act 2004 and associated regulations: This will include the need to determine whether there are a significant proportion of HMOs in the City being managed ineffectively and to consult with persons who are likely to be affected by the scheme. The matter would be subject to CEB approval at two stages, namely consideration of the results and recommendations of any review and a decision to consult on future proposals to re-designate the scheme (if appropriate).

### **Future plans and priorities**

33. HMO licensing remained the top priority in the recently approved Private Sector Housing Policy 2016-2019. The focus has shifted to giving longer licences to broadly compliant landlords and focusing resources on unlicensed HMOs to ensure that the corporate target for licensing 80% of the estimated HMOs by 2018/19 is met.
34. Improving the applications software is another key priority. The customer service issues generated by the volume and complexity of the applications are considerable and whilst this is a national problem, a solution would significantly improve the service.
35. Influencing the contents of and responding to the new legislative changes proposed by the government in the Housing and Planning Act 2016 will hopefully give the HMO Enforcement Team a boost in effectiveness. The deterrent effect of banning orders, heavy fixed penalty fines, increased rent repayment orders and the transparency of a national database will enhance the impact of the service and should help improve the private rented sector in Oxford.

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**List of background papers:** None