

**To:** Cabinet  
**Date:** 09 September 2020  
**Report of:** Head of Service – Regulatory Services and Community Safety  
**Title of Report:** Review of the Additional HMO licensing scheme

<b>Summary and recommendations</b>	
<b>Purpose of report:</b>	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 2021
<b>Key decision:</b>	Yes
<b>Cabinet Member:</b>	Councillor Alex Hollingsworth, Cabinet member for Planning and Housing Delivery
<b>Corporate Priority:</b>	More Affordable Housing.
<b>Policy Framework:</b>	Housing and Homelessness Strategy 2018-21
<b>Recommendations :</b> That Cabinet resolves to:	
<ol style="list-style-type: none"> <li>1. <b>Consider</b> the Review of Licensing of Houses in Multiple Occupation 2020 and note its findings;</li> <li>2. <b>Resolve</b> that the Review indicates that a significant proportion of HMOs in the Council's area are being managed ineffectively;</li> <li>3. <b>Instruct</b> 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; and</li> <li>4. <b>Request</b> a future report setting out the results of the statutory consultation and the proposed future of the licensing scheme</li> </ol>	

<b>Appendices</b>	
Appendix 1	Report on the review of the Houses in Multiple Occupation Licensing Scheme 2020.
Appendix 2	Proposed Fee Structure
Appendix 3	Risk Register
Appendix 4	Initial Equalities Impact Assessment

## **Introduction and background**

1. HMO licensing was introduced in July 2006 by the Housing Act 2004 (the Act), at that time HMOs that were 3 storeys in height **and** occupied by 5 persons required a mandatory HMO licence. In October 2018 the definition for HMOs requiring a mandatory licence was changed to include any HMO occupied by 5 persons forming more than 2 households. Additional HMO licensing schemes, if introduced by Local Authorities, apply to those HMOs which are not required to have a mandatory HMO licence.

2. Additional HMO licensing was first introduced in Oxford in January 2011. The scheme was renewed in 2016 and expires in January 2021. The scheme means that all HMOs including properties converted into self-contained flats without Building Regulation Approval (sec 257 HMOs); require a licence

### **Legal issues**

3. The legal issues relating to this report are set out within the Housing Act 2004.
4. Local Authorities have the ability to designate areas and therefore renew schemes containing HMOs to be subject to additional licensing, without the need for approval from the Government
5. Within the Act there is also a legal requirement to review the scheme “*from time to time*” following its operation. To fulfil this requirement a review has recently been undertaken.
6. In order to renew the current scheme the Council must consider a series of factors as set out in Sections 56 and 57 of the Housing Act 2004, to 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. The consultation must be for a period of not less than 10 weeks and it is proposed that it will be undertaken by an external agency.
7. The consultation exercise will include information about the proposed designation and details of the issues relating to HMOs in the city, it will explain the reasons for the proposal and how the Council will continue to use licensing to address specific problems so as to allow an informed response from the consultees.
8. The consultation will seek views about the proposed designation including the level of support or otherwise; to determine whether landlords, stakeholders, residents and tenants support, in whole or in part, the proposed designation for an additional HMO licensing scheme to cover all HMOs which do not require a mandatory HMO licence. The consultation will also provide opportunities for any alternatives to be identified and to collate views to inform the licensing proposal including :
  - Fee Structure -including fee levels and discounts
  - Licence Conditions
  - Consultees’ perceptions about the key issues in relation to HMOs
9. Following the consultation exercise, a further report will be presented to Cabinet to decide upon the renewal of the scheme, Following this there must be a period of 12 weeks before a scheme can be introduced, meaning that there will be a period when there is a lapse in the licensing regime, with some HMOs operating without regulation via the HMO licensing scheme. The proposal would be that the new designation would commence in May 2021 for a further period of 5 years.
10. MHCLG issued guidance for council’s during the COVID 19 pandemic suggesting a pause in introducing licensing schemes. As it is a legal duty to consult widely on the renewal of the scheme it was considered that to commence such a consultation exercise during lockdown would have significantly increased the risk of a legal challenge. Other local authorities have been affected, with Newcastle delaying the introduction of their licensing scheme by 3 months, Durham extending consultation that had begun prior to lockdown and Wirral’s licensing scheme has lapsed for 3 months. The pause due to Covid

has resulted in the timetable for renewal being delayed meaning that there will be a period of around 4 months where there will be no additional HMO licensing scheme.

11. During this period, as there is no scheme, the Council cannot issue licences or renewals. However where licences expire, existing landlords will be able to apply for a new licence should the renewal of the scheme be approved in February. These licences will be charged at the renewal fee and will be issued at the start of the new scheme. This will affect in the order of 520 licences which will require a renewal in this period.
12. The Council will not be able to take Enforcement action against landlords for operating an unlicensed HMO or for breach of conditions on an expired licence during this period. However enforcement action can still be taken, where complaints are received, to remove hazards from HMOs, which is a useful, but often a slower process, in resolving issues. Any unresolved justified complaints will be taken into account upon the renewal of the licence, with the landlord possibly having to pay a higher renewal fee for poor management.
13. 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:

#### **Key Findings from the review.**

14. The review of the current scheme has been concluded and is attached to this report in Appendix 1
15. 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
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 review found that since the start of the scheme in January 2015 the Council have processed 12, 236 licences in relation to 3850 HMOs. The Council have continued to work with landlords and agents to improve compliance with the HMO licensing scheme, currently only 49% of HMOs are fully compliant, and of those 47% are those within the additional HMO licensing scheme. This equates to around 1050 additional licensed HMOs which are non-compliant upon re-inspection.
  19. The Council has a stepped approach to the enforcement of non-compliance with the licensing scheme, which can mean that minor breaches are rolled into the next licence, often with a higher renewal fee; through to financial penalties for repeated or major breaches. To date this has seen 54 financial penalties being taken for breaches in conditions and of management regulations in HMOs either having or requiring a licence under the additional scheme.
  20. 2,460 investigations into unlicensed HMOs have been undertaken, these have resulted in 25 financial penalties being served for operating HMOs requiring a licence, of these 19 were for HMOs requiring a licence under the additional scheme. There were also 22 penalties served relating to breaches of related legislation, eg non-compliance with the HMO management regulations and Improvement notices, such legislation is not dependant on additional HMO licensing.
  21. The Council has had to take over control of the management of 3 properties where the landlord has failed to licence the property as a HMO and has dealt with 16 cases where this was a real possibility, however a suitable licence holder was appointed in these cases so further action was not pursued.
  22. The Council continues to receive service requests from tenants and from neighbours concerning HMOs with 1,921 service requests received concerning HMOs covered by additional licensing since the start of the scheme.
  23. It is clear that from the proportion of service requests relating to HMOs received that there is a significant number that continue to be ineffectively managed, with 1 in 5 of all service requests received relating to known HMOs
  24. Landlords of HMOs operating in the city have had a “level playing field” since the introduction of additional HMO licensing in 2011, ensuring standards are the same for all HMOs irrespective of size. Since that time the council have adopted and continued a multi- agency approach, working in partnership with the Police, Fire Service, Border Control and other internal services, for tackling issues associated with HMOs
  25. The Council continues to provide information and training to landlords via the Landlord’s Information Exchange and the Landlord Accreditation scheme, the Council also hold regular forum meetings with local agents. Despite this, it is disappointing to note that there are a number of landlords and agents who do not engage with the Council until formal action is being taken.
  26. The Housing and Homelessness strategy 2018-2021 is a key driver for the delivery of the corporate aim of more affordable housing and the midterm review of the strategy further reinforced this by including a priority to “make better use of

the Private rented Sector accommodation. This strategy also supports the work undertaken by the Council in relation to homelessness and rough sleeping and the priority to create sustainable communities that are safe and healthy to live in.

27. The overall improvement of HMOs through Additional Licensing is seen as a key contributor to the corporate aim of providing more affordable housing with an overall improvement of conditions in the Private Rented Sector.
28. If the current scheme is not renewed it will lapse and HMO licensing will only apply to HMOs within the city that require a mandatory licence, this is currently estimated at only 55% of the licensable HMO stock. A further consideration of not having an additional HMO licensing scheme could be the likelihood that some landlords will reduce occupation in HMOs to avoid licensing controls, which could cause an increase in homelessness
29. If the scheme is renewed even with the delay, there would be a period where the HMO licence scheme could not be enforced in smaller HMOs in the city, which could leave some tenants vulnerable during this period

### **Option Appraisal**

30. As part of the review a number of options were considered in relation to the HMO licensing scheme, these options were to renew the scheme in its entirety, renew the scheme in parts of the city or not renew the scheme. The best option from the appraisal was to renew the scheme in its entirety.
31. The main reasons supporting the option of renewal of the scheme in its entirety are as follows:
32. The Private Rented Sector in Oxford has grown considerably in Oxford and the city continues to be one of the most expensive places to live in terms of house prices. This puts the home ownership market beyond a large number of residents 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. Licensing ensures that the Council has a comprehensive toolkit to deal with poor conditions and issues around anti-social behaviour in all HMOs. Thereby improving the living conditions for those residents in occupation and those who are affected by HMOs in the neighbourhood.
33. Service requests relating to HMOs continue to be made by tenants and neighboring residents irrespective of which type of HMO licence required. From the data available it can be seen that there is no marked difference in the type of service requests received for those in the additional HMO licensing scheme or those requiring a mandatory HMO licence. If the scheme was not renewed in its entirety the Council would need resources to be able to respond to and deal with around 400 service requests per year regarding HMOs not within the mandatory scheme.
34. The rate of compliance with the additional HMO licensing scheme is 47%, therefore there is a large proportion of this type of HMOs which do not meet minimum standards even though licence holders and managers are being given specific details of the requirements for their properties. If the scheme was not renewed in its entirety this figure would likely increase which would have an impact on the number of service requests the Council receives regarding HMOs.
35. 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 will limited options for regulating these properties.

## Financial Issues

36. Following comments received during the 2015 consultation, a revised fee structure was introduced when the current scheme began in 2016. Landlords and agents were very clear that compliant landlords should not have to subsidise non – compliant landlords. Oxford City Council implemented a HMO licensing fee scheme to reflect these comments and to incentivise landlords to change their behaviour and improve management of their properties. Oxford has therefore introduced and operated a unique charging scheme for HMO licensing which reflects the costs of operating the scheme and compliant landlords are not subsidising non-compliant landlords. See current fee structure below

### Description of HMO licensing Scheme fees

Fee Category	Description
Category A	New HMO operating for more than 12 weeks without a licence
Category B	New HMO with application made within 12 weeks.
Category C	One year renewal
Category D	One year renewal classed as poor management
Category E	Two year renewal for compliant landlords
Category F	Five year renewal for Oxford City Council accredited landlords only

37. The review report has analysed the fee income in detail and it is clear that a compliant landlord has paid considerably less than one who is not compliant and where the Council has had to use extra resources to ensure that the scheme is complied with.
38. It is clear that there are a few authorities that charge much higher fees. It is interesting to note that these areas are similar cities to Oxford, being university cities and regional employers.
39. In April 2019 following a High Court judgement, a two part fee structure was introduced. The Council charge an initial fee as part of the application, this covers the processing of the application, including a visit to the HMO if it is a new application. The second part of the fee is charged when the Council are in a position to grant the licence, this part of the fee covers the operational and enforcement costs in relation to the licensing scheme.
40. The financial structure of the Scheme was designed to be ‘cost neutral’ and to negate the need to use any revenue funding to support the delivery of the Scheme. The Council regularly reviews the fees and charges structure of the Scheme to ensure that this has remained the case.
41. The review however has highlighted a number of changes that could be made to ensure that licence holders are paying a fair fee based on the management of the property and the level of compliance. The detailed analysis has found that in a number of circumstances the resource spent is not reflected in the licence fee and as such it is proposed to create further fee categories and amend some of the stage payments to reflect true costs – see Appendix 2

## Level of risk

42. The risk register is attached at Appendix 3 – there are no abnormal risks associated with this stage of the renewal process

## Equalities impact

43. An initial Equalities Impact Assessment is attached at Appendix 4

## Environmental Impact

44. 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 within privately rented homes. It is likely that the energy efficiency of HMOs will decline, this will also effect the council’s target of reducing carbon emissions from residential properties, as homes are one of the biggest carbon emitters in the UK.
45. Waste management issues could also be affected by the scheme not being renewed, household recycling can be an issue in HMOs and without the input of the licensing scheme and the ability to manage and maintain waste issues in HMOs, household recycling rates are likely to reduce. This is likely to result in a spiral of decline and an increase in environmentally related service requests.

## Conclusion

46. The review of the scheme has highlighted a number of successes with the continuation of the additional HMO licensing scheme. Compliance rates are improving and there is much more engagement with landlords and agents. However it is disappointing to note that poor conditions and management practices still exist in this sector of the private rented stock. Without the proactive work associated with HMO licensing such issues would become more widespread and therefore the continuation of HMO licensing will help to prevent a decline in standards within this vital sector of the housing market in Oxford.

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## Background Papers:

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| 1 | Report on review of Additional HMO licensing scheme 2020 |
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## Appendices to report –

- Appendix 1 – Report on the review of the Houses in Multiple Occupation Licensing Scheme 2020.  
Appendix 2 – Proposed Fee Structure  
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