

To: Cabinet
Date: 10 March 2021
Report of: Head of Regulatory Services and Community Safety
Title of Report: Additional HMO licensing scheme renewal

Summary and recommendations	
Purpose of report:	The report provides the results from the consultation exercise carried out for the proposal to renew the HMO Licensing Scheme and seeks approval from members to designate the whole of the City as subject to additional licensing under section 56(1)(a) of the Housing Act 2004 in relation to the size and type of HMO specified in the recommendations of this report for 5 years commencing on the 10 th June 2021
Key decision:	Yes
Cabinet Member:	Councillor Alex Hollingsworth, Cabinet member for Planning and Housing Delivery
Corporate Priority:	More Affordable Housing.
Policy Framework:	Housing Strategy
Recommendations: That Cabinet resolves to:	
<ol style="list-style-type: none"> 1. Note the Executive summary report of the Consultation of Licensing of Houses in Multiple Occupation (HMO) 2020 and note its findings attached at Appendix 1; 2. Confirm that, having considered the report of the consultation along with the <i>Review report: Additional HMO licensing scheme 2020</i> presented to the 9th September 2020 Cabinet meeting, an Additional HMO licensing scheme is required for a further 5 years commencing the 10th June 2021; 3. Designate the whole of the City as subject to additional licensing under section 56(1) (a) of the Housing Act 2004 for all 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; 4. Delegate to the Head of Regulatory Services and Community Safety the 	

authority to sign and finalise the designation at Appendix 10;

5. **Recommend** to Council to adopt the proposed fees and charges structure for both mandatory and additional HMO licences attached at Appendix 6; and
6. **Adopt** the eligibility criteria for the new scheme as attached at Appendix 4 and Appendix 5 and delegate to the Head of Regulatory Services and Community Safety the authority to add or remove accreditation schemes, in consultation with the Head of Law and Governance.

Appendices

Appendix 1	Executive Summary Report – Consultation
Appendix 2	Comparison of Consultation methods
Appendix 3	Council’s response to representations
Appendix 4	Eligibility Accreditation schemes
Appendix 5	Multi- year HMO licence criteria
Appendix 6	Fee Structure
Appendix 7	Scheme Conditions
Appendix 8	Equality Impact Assessment
Appendix 9	Risk Register
Appendix 10	Scheme Designation

Introduction and background

1. The Council has operated an additional HMO licensing scheme since 2011 which requires all HMOs to be licensed, with a renewal being implemented in 2016 for a scheme that expired on the 24th January 2021. There is a legal requirement to review a licensing scheme and the formal review took place in 2020.
2. A report was taken to the 9th September 2020 Cabinet which outlined the results of the review of the Additional HMO licensing scheme. The report also outlined the importance of the additional HMO licensing scheme to the wider Housing Strategy of tackling poor conditions and poor management practices in the private rented sector, which is linked to the Council’s priority of “meeting housing needs”.
3. The Cabinet concluded that the report showed that a significant proportion of HMOs in the Council’s area were being managed ineffectively so as to give rise to one or more problems, whether for HMO occupants or others in the community. With regard to the HMO properties in the area, 45% fall outside of the national requirement for a licence. In particular, the report demonstrated that the poor management of HMOs was causing:
 1. tenants to live in unsafe conditions as on first inspection almost 40% of HMO licences require conditions to be added to complete works to improve the property. On re-inspection 53% of those HMOs subject to Additional Licensing were found to be non-compliant;
 2. tenants to be at risk of landlords not providing even basic safety checks as 20% landlords fail to submit safety certificates e.g. gas safety

certificate, electrical installation condition certificate, smoke detection / fire alarm testing certificate or energy performance certificate.

3. problems for tenants and residents, with 36% of cases related to those HMOs subject to Additional Licensing. These service requests relate to noise / anti-social behaviour, planning problems, environmental nuisance (e.g. waste management problems), poor conditions and tenancy relation issues (illegal eviction, harassments, tenancy related enquiries);
 4. failure to abide with planning legislation, with 60% of all planning enforcement notices relate to HMOs
4. Cabinet was satisfied therefore that the statutory conditions had been met to implement a discretionary licensing scheme, and instructed officers to proceed with a statutory consultation. The improvement of the condition and management of HMOs remains a key objective for the Council.
5. The Council initially commenced the consultation on the 10th September 2020 for a period of 12 weeks, but this period was extended due to the COVID-19 pandemic and November lockdown, concluding on the 31st December 2020 after a total period of 16 weeks. The results of the consultation exercise are summarised in this report and the consultation report is attached in Appendix 1.

Key findings from the Consultation exercise

6. The Council appointed an independent research consultant to undertake the exercise required by section 56(3) of the 2004 Act. The Council had careful regard to the requirements of section 56(3) and to the requirements of lawful consultation. The exercise covered the renewal of the HMO licensing scheme alongside the proposal to introduce a selective licensing scheme, which is subject to a separate report on the agenda. The Executive Summary report can be found in Appendix 1.
7. The initial consultation exercise was extended due to the second national lockdown being introduced in November 2020. The exercise was extended until the 31st December, which allowed more time for respondents to give feedback and for a further online event for landlords and agents to be undertaken.
8. A range of techniques were used for the consultation, which included an online questionnaire, stakeholder interviews, resident and tenant interviews and 4 events for landlords and agents. Paper questionnaires were also available, with 138 sent out. Unfortunately, due to the restrictions in place in relation to the COVID-19 pandemic, face to face interviews / forums were not undertaken as part of the exercise; however meetings were held using a digital platform and were well attended.
9. An analysis of the methods used by other authorities undertaking similar consultation exercises prior to the COVID 19 pandemic, and the responses to their consultations, has been undertaken. It can be seen that the consultation undertaken by the Council has had comparable, if not better responses with the methods used in its consultation. See Appendix 2
10. The response to this consultation has been around 5 times greater than the response to the previous consultations carried out by the Council in relation to licensing schemes, with a 96% increase in responses from landlords and agents to this consultation exercise compared with the consultation carried out in 2015.

11. In total the Council received 1,987 questionnaires and 53 written submissions. The breakdown of the respondents via the questionnaire is shown in Table 1 below. There were 4 virtual events for landlords and agents which were attended by 148 participants. 10 local tenants and residents, recruited from across the city, attended a virtual focus group and 11 in-depth interviews were undertaken with stakeholder organisations.

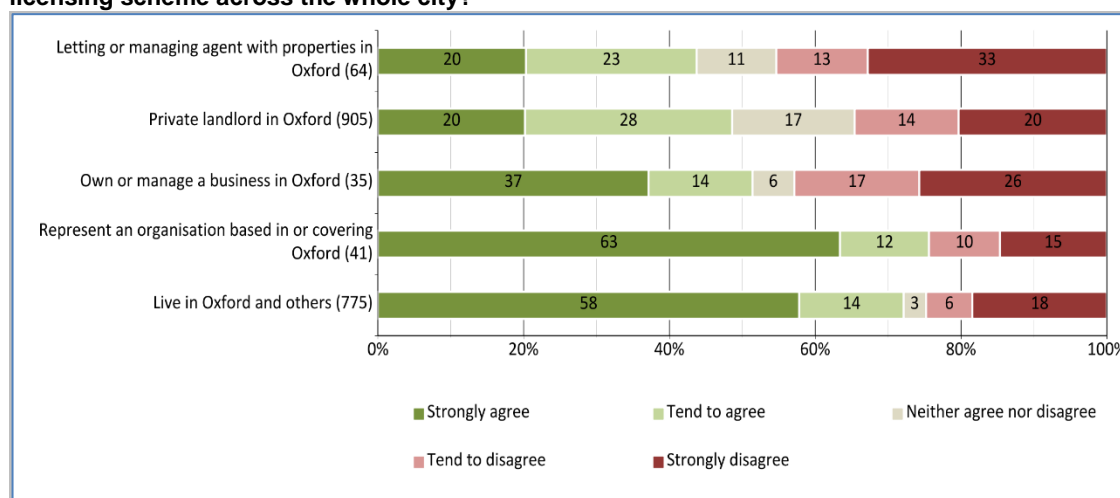
Table 1: Consultation questionnaire completions by type of respondent (Note: Percentages may not sum to 100% due to rounding)

Stakeholder type	Count	% Valid responses
Letting or managing agent with properties in Oxford	70	4%
Private landlord in Oxford	1,012	51%
Own or manage a business in Oxford	38	2%
Represent an organisation based in/covering Oxford	41	2%
Live in Oxford	764	38%
Other respondents	62	3%
Total responses	1,987	100%

12. The consultation demonstrated that 71% of organisations, 64% of residents and 50% of agents believe the HMO licensing scheme has improved properties – 45% landlords also agreed there were improvements.

13. The consultation demonstrated that 76% of organisations 72% of residents / other respondents were in favour of renewing the Additional Licensing scheme. Around half of landlords (49%) agreed with the proposal to renew, although 35% of landlords disagreed. More than two fifths of agents (44%) agreed; however, a more-or-less identical proportion (45%) disagreed.

To what extent do you agree or disagree with the Council’s proposal to renew the current additional licensing scheme across the whole city?



14. The consultation also asked respondents whether stopping the scheme would have a positive or negative impact. Around four in five of those responding on behalf of organisations, and almost three quarters of residents and other

respondents, felt that that not continuing the scheme would be likely to lead to a negative impact in their area. More than half of those responding from businesses also shared this view. There was no particular consensus among landlords and agents. Nearly half of landlords (48%) and just over two fifths of agents (42%) felt that not renewing the scheme would lead to negative impacts, although similar or identical proportions (44% of landlords and 42% of agents) did not foresee any impacts. The Council is satisfied that there is support for renewal of the Additional Licensing scheme and that not renewing the scheme would likely lead to negative impacts.

15. The Council must consider any responses received in relation to the consultation, in accordance with section 56(3) of the 2004 Act. Having carefully considered the responses the Council's detailed response to them is provided in Appendix 3.
16. A number of changes have been made to the proposed HMO licensing scheme as a result of the consultation which are detailed below.

Eligibility criteria

17. There are financial benefits to being an accredited landlord and both letting agents and landlords wanted wider eligibility for that status. The Council recognises that its own accreditation scheme has resource limitations and that there are advantages to having greater eligibility for the better landlords as long as quality is not compromised. It is therefore proposed that a wider range of organisations are accepted, and the proposed changes are contained in Appendix 4. Simply being a member of a landlord or trade organisation is not sufficient and there has to be a training element to the accredited status. As other schemes may subsequently be considered suitable and existing schemes less so, upon review, it is considered that delegated powers to add to and remove schemes from the list should be delegated to the Head of Regulatory Services and Community Safety, subject to approval by the Head of Law and Governance who can consider the potential legal issues arising from such decisions.
18. There was positive feedback in relation to the current scheme multi – year licence approach, where compliant landlords are able to be granted longer licences and therefore are not paying the same as those landlords who are not compliant with the scheme. Therefore the eligibility for multi – year licences will remain the same as that in the previous scheme see Appendix 5

Fees

19. There was feedback from landlords regarding the proposed fees and this is dealt with in detail in the financial implications part of the report. The Council has had careful regard to the Court of Appeal's decision in *R (Gaskin) v Richmond upon Thames LBC* and has structured the proposed fees accordingly. The feedback has been broadly accepted and incorporated into the proposed fees in Appendix 6.

Licence Conditions

20. All HMO licences, whether requiring a mandatory HMO licence or an Additional Scheme HMO licence, are issued with conditions. The same licence conditions will be applied to mandatory licensable HMOs (those with five or more occupants) and additional licence scheme HMOs. The conditions can be mandatory conditions, which must be included under the Housing Act 2004, standard discretionary conditions, which the Council considers appropriate to be attached to all licences,

and those conditions which are specific to the licensed property to address issues such as fire safety, disrepair and poor management. See Appendix 7

21. The consultation demonstrated that 77% of organisations, 73% of residents / other respondents and a little under half of landlords and agents (44% landlords, 47% agents) agreed with the proposed HMO licensing conditions. However, specific concerns were raised with regard to conditions relating to:

- Anti-social behaviour – many landlords, agents and a group representing tenants in the city thought it was not appropriate to require landlords to include a condition in their tenancy agreements in relation to anti-social behaviour, or make them “responsible”.
- Waste management – many landlords thought it was not appropriate to make them responsible, and tenants raised the point that the tenancy agreement makes them responsible for waste management.

23. The response to feedback received during the consultation exercise regarding the proposed licence conditions can be found in Appendix 3. Changes have been made to conditions relating to:

- Anti-social behaviour – the requirement to include a condition in tenancy agreements has been removed as has the standard discretionary condition relating to anti-social behaviour. The Council will include a condition if required at a specific HMO.
- Waste management – this is a mandatory condition, however we have revised the wording of the condition to make it clear the landlord is responsible for the provision of waste management receptacles at the start of the tenancy and for dealing with problems during or at the end of the tenancy, and that tenants are also responsible during tenancy.

24. The Council have undertaken a benchmarking exercise with other local authorities and have reviewed the standard discretionary conditions. Each HMO Licence will now contain 29 conditions (both mandatory and discretionary). Whilst 29 conditions may seem high, it is a comparable number to those imposed by other authorities with the average being 34 conditions. The new conditions reflect concerns raised by tenants about including conditions on rent receipts and property inspection, as well as rewording others to make them clearer for landlords and tenants

Planning /Short let properties

25. Feedback has been received suggesting that planning and HMO licensing appear to conflict. Whilst planning legislation is separate from the legislation concerning HMO licensing, a number of recent tribunal cases, e.g. *Waltham Forest LBC v Khan*, have held that conditions can be applied to HMO licences where the correct planning permission has not been issued.

26. A number of comments were also received about the use of properties as short term lets. The Council often discovers rent-to-rent and sub-letting when undertaking unannounced visits to HMOs. This type of letting practice, whilst not illegal, can often mean that private tenants are living in unsafe accommodation with a lack of tenancy security. Guidance will be produced outlining landlords’

and tenants' responsibilities in relation to such practices. Properties used as short lets are exempt from property licensing but such properties may need planning permission depending on the intensity of their use.

Scheme Outcomes

27. Following the feedback from the consultation it is clear that more transparency is needed in reporting outcomes throughout the scheme. The Council will therefore publish this information at timely intervals throughout the new scheme.
28. Feedback was also received concerning the estimated percentage of unlicensed HMOs which remain in the City. The Council believes that the majority of those that remain relate to properties which are HMOs by virtue of Section 257, i.e. buildings converted into self-contained flats without Building regulation approval. Therefore existing Council datasets will be used during the scheme to identify any gaps and to ensure that properties of this nature requiring a licence are licensed.
29. The main aim of the HMO licensing scheme is to improve property conditions and management practices within HMOs. The focus in the scheme, if approved, will be on scheme compliance. This will be evidenced through an increase in the number of 5 year and 2 year licences issued and a reduction in the number of Category D renewals issued (where non-compliance is evident at renewal), reduction in number of Category 1 (and possibly Category 2) hazards found in licensable HMOs and/or an increase in the number of such hazards remedied following Council intervention, whether through use of Part 1 powers or by way of licensing. This will demonstrate that landlord's management practices and property conditions in the HMO stock are improving.
30. The Council have considered the length of the licence scheme and has concluded that it should be for 5 years, as a scheme of a shorter duration will mean that the Council's objectives are less likely to be achieved.

Implications and impact of COVID-19

31. Current Government guidance recommends that local housing authorities continue work on pending (licensing) designations but consider pausing them at an appropriate moment if it is necessary. The start of the consultation exercise was initially delayed due to the first national lockdown and then, once started, the consultation was extended for a further 4 weeks. This allowed extra time for respondents and an extra landlord/agent event which was well attended.
32. Unfortunately due to the delays, the previous Additional HMO licensing scheme has expired. Licences remain in force until their expiry date but if it is agreed to renew the scheme there will be 612 Additional HMO licences which will have expired before a new scheme can commence on the 10th June 2021. If the scheme is to be renewed, the Council will commence receiving applications from 1st April 2021.
33. The current Government guidance clearly advises local housing authorities to consider local circumstances when introducing additional licence schemes. The Additional Licensing scheme is not a new scheme – it is replacing one that has been in existence for the last ten years. If the re-designation is delayed further there will not only be a longer period of time that licensing cannot be used to improve conditions and management of HMOs, but also a larger administrative burden and backlog.

34. Since the start of the pandemic the Council has regularly revised its Enforcement Policy in light of Government guidance. This has meant a risk based, proportionate approach to complaints and inspections of HMOs for the safety of residents, landlords and officers. However, the Council has a statutory duty to take action and to enforce where necessary, which it will continue to do if required in those HMOs which are not licensed for a period of time, utilising other powers under the Housing Act 2004 where available. This would mean an increased use of Part 1 notices (for which there is a charge) or an increased use of Financial Penalties for failing to comply with management regulations. Although such enforcement action can take longer than licensing powers it is anticipated that landlords will not wish to put their fit and proper status as a licence holder at risk should the scheme be renewed.
35. In light of the COVID-19 pandemic the Council has considered if proceeding with a designation for an Additional HMO licensing scheme at this time is appropriate; and believes that the designation should go ahead'
36. HMOs provide essential accommodation to around 1 in 5 residents in the city and often these residents are vulnerable persons. Licensing can offer protection for HMO occupiers in that it gives them assurance about the standard and management of the accommodation and important protection against unlawful eviction. Licensing ensures that both licence holders and managers are "Fit and Proper" persons and have an understanding of housing/ tenancy law. Licensing therefore can help prevent homelessness and reduce pressure on local resources at this time of demand
37. Whilst the Council acknowledges that paying for a licence can be a financial burden on landlords, who may now have lower income than previously due to the pandemic and its' consequences, licensing conditions can be used to remedy issues relating to Management Regulations and by limiting the licence to one year, allows the Council to incentivise landlords to comply. The alternative of issuing Financial Penalties would be a higher financial burden compared to licensing fees.

Legal issues

38. Under section 56(1) of the 2004 Act, and the General Approval issued by the Government in 2015, provided it consults for at least 10 weeks, the Council has the power to designate areas and therefore renew schemes containing HMOs to be subject to additional licensing, without the need for approval from the Government, however the Council must follow the requirements of the Housing Act 2004 when it is considering additional licensing schemes for HMOs.
39. The legal issues relevant to this report are set out in sections 56 and 57 of the Housing Act 2004, which places requirements upon the Local Housing Authority when considering a designation for additional licensing of HMOs. Under section 56 the Council must:
- Consider that a significant proportion of the HMOs of the HMOs the Council proposes to license 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 (section 56(2) of the 2004 act); 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).

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).

40. In February 2010 the Government produced general guidance around the approval steps for additional and selective licensing designations in England. 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.

41. While the 2010 guidance has since been archived, and has not been replaced with new guidance about additional licensing, the Council considers that the above examples provide a helpful, though not exhaustive, yardstick by which to assess the effectiveness of HMO management practices in the private rented sector. The Council believes that a significant proportion of HMOs in the Council's area were being managed ineffectively so as to give rise to one or

more problems, whether for HMO occupants or others in the community (Housing Act 2004, section 56(2)). Around 45% of HMOs in the area fall outside of mandatory licensing i.e. those HMOs that are occupied by three or four occupiers; and all self-contained flats that are Houses in Multiple Occupation by virtue of section 257. The Cabinet at its meeting on the 9th September 2020 concluded that the HMO review report evidenced that a significant proportion of smaller HMOs and those which were HMOs by virtue of section 257 of the Housing Act 2004, in the Council's area, were being managed ineffectively so as to give rise to one or more problems for HMO occupants and/or members of the public. The HMO review report covered the period 2016 to 2019 and these conclusions remain relevant: in particular, the report evidenced problems in these HMOs with:

- Tenants living in unsafe conditions: The review report demonstrated that on first inspection almost 40% of HMO licences require conditions to be added to complete works to improve the property and on re-inspection 53% of those HMOs subject to Additional Licensing found to be non-compliant. During 2020, restrictions have meant more desk based checks however 30% landlords have failed to complete work required – while this is accepted that this is in part due to restrictions, it shows that improvement work still needs to be undertaken and organised by landlords.
- Landlords not undertaking basic safety checks: The review report demonstrated that 20% landlords fail to submit safety certificates e.g. gas safety certificate, electrical installation condition certificate, smoke detection / fire alarm testing certificate or energy performance certificate. During 2020, restrictions may have meant that landlords have not been able to undertake checks however it is still likely that the proportion of landlords deliberately failing to undertake checks remains at around 20%.
- problems for tenants and residents: The review report found that during 2016-2019, 36% of cases related to those HMOs subject to Additional Licensing and these service requests relate to noise / anti-social behaviour, planning problems, environmental nuisance (e.g. waste management problems), poor conditions and tenancy relation issues (illegal eviction, harassments, tenancy related enquiries). The number of service requests remained high in 2020, despite restrictions due to COVID19 and it has been notable that complaints related to illegal eviction and harassment have increased.
- failure to abide with planning legislation: the review report found that during 2016 to 2019, that 60% of all planning enforcement notices relate to HMOs. This enforcement activity has continued in 2020, despite the restrictions due to COVID19.

42. A statutory consultation has been undertaken with landlords, letting agents, tenants and their representatives, residents and other stakeholder in accordance with section 56(3) of the 2004 Act. The consultation satisfied the requirements of the 2004 Act and the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015. The representations made have been considered and the Council's response forms part of this report.

43. The Council has considered the extent to which the codes of practice approved under section 233 of the Housing Act 2004 have been complied with by persons managing HMOs in the area. These codes relate to the management of HMOs used for student accommodation managed and controlled by educational establishments. We are not aware of any issues with this type of HMO which will affect the decision to renew additional HMO licensing.

44. The Council has also been mindful of its obligations under section 57 of the 2004 Act. In particular, the Council is satisfied that an additional licensing designation would be consistent with its overall housing strategy, and would dovetail effectively with its approach to addressing homelessness, empty properties and anti-social behaviour. In that regard, in summary, the Housing and Homelessness Strategy 2018-2021 outlines the approach the Council will take to tackle the complex issues it faces to deliver housing. The work undertaken in relation to HMO licensing forms part of this strategy, in that it contributes to the priority of “making the best use of private sector accommodation” by raising standards and improving property conditions. HMO licensing work also contributes to other areas of the overall strategy by helping to prevent and reduce homelessness, to identify empty properties and bringing them back into use and to manage incidents of anti-social behaviour in the private rented sector more effectively which is undertaken in a co-ordinated manner across the Council. Examples of proposed action include:

- Working with Housing Services when placing persons in HMOs to ensure the tenants move into homes that meet minimum standards;
- Working with the police on security in HMOs with the aim of educating tenants on security and working with landlords to make, if needed, improvements;
- Continued working with the fire service on joint visits to HMOs in line with the agreed protocol to raise standards;
- Continued joint working within the Council in relation to anti-social behaviour and waste management

45. The Council has considered alternative courses of action to additional HMO licensing to deal with the problems with ineffectively managed properties, which formed part of the September report :

- Use of current statutory powers (e.g. Part 1 of the Housing Act 2004 to improve conditions, Environmental Protection Act 1990). This relies on the council reactively inspecting properties and then serving notice for repair works. Those renting in the private sector do not complain to the Council about conditions in their homes, often putting up with them or if they can, ending their tenancy and moving out. While the current Council databases are extensive, it does not give an accurate record of which properties are HMOs. Additional Licensing gives the Council the opportunity to proactively tackle the poor conditions that are too often found in the sector. It is not viable to rely on proactive inspection (funded through general rates or notice charges) to inspect the number of properties affected and resolve problems associated with poor management of HMOs.

- Voluntary accreditation. The Council has operated a free to join voluntary accreditation scheme for over 10 years, however there are approximately only 150 landlords currently accredited and less than 700 HMO licences are with accredited landlords or agents – that accounts for 20% licensed HMOs. This shows that landlords are not motivated to join a voluntary accreditation scheme. The HMO licensing scheme has demonstrated that landlords are not always aware of legal requirements such as gas safety or electrical safety or EPCs, with 20% non-compliance. There are concerns that those landlords that do not participate in accreditation may not be aware of their responsibilities, however accreditation alone will not resolve problems associated with poor management of HMOs.
- Landlord licensing was suggested by consultation respondents as an alternative. There is no national legislation behind this so as such this would be a voluntary scheme and subject to the same lack of engagement as our current accreditation scheme. This would not resolve problems associated with poor management of HMOs.
- Property MOTs was suggested during the consultation as an alternative scheme that could be introduced with local by-laws. The Council agrees that this scheme has the same aims as property licensing – to improve property conditions. However, by-laws need an Act to enable them to be made. There is no provision to make by-laws for such a scheme under the Housing Act 2004, therefore we would have to demonstrate that other legislation was applicable. In addition, a by-law cannot be made where alternative legislative measures already exist that could be used to address the problem – in this instance, property licensing under the Housing Act 2004. We therefore do not believe that a by-law can be lawfully introduced. This would mean such a scheme is voluntary and subject to the same lack of engagement as our current accreditation scheme. This would not resolve problems associated with poor management of HMOs.
- Appendix 3 details other suggested alternatives and why they are not viable alternatives.

46. The Council is satisfied that none of these alternatives, such as landlord accreditation, or the use of its powers under part 1 of the 2004 Act, whether individually or collectively, would be adequate to meet the Council's strategic objectives, and that additional HMO licensing is both a necessary and proportionate measure to enable it to do so.

47. The designation (see Appendix 10) is considered an essential step in tackling the problems identified with ineffectively managed HMO properties as it will allow the Council to continue with a proactive approach using enhanced powers to improve the HMO stock within the city. However the designation will be limited for Sec 257 HMOs to those that are mainly or wholly tenanted, including those with resident landlords:

48. The Housing Act 2004 requires 3 months of statutory publicity to take place following the approval of a designation to introduce an Additional Licensing Scheme for HMOs, including placing adverts in two local newspapers. The new scheme, if agreed, would commence on the 10th June 2021 for a period of 5 years.

Financial implications

49. The Council has paid careful attention to the Court of Appeal's decision in *R (Gaskin) v Richmond upon Thames LBC* and proposes to continue with its two stage fee structure. The proposed fee structure can be seen at Appendix 6. The fee structure for both mandatory and additional licensing scheme may take account of the staff costs, administration, scheme management and enforcement.
50. The Council can only use licensing fees to cover the costs incurred in carrying out licensing functions, and its functions under Chapter 1 of Part 4 to the 2004 Act in relation to interim and final management orders made in respect of HMOs (see section 63(7), 2004 Act) in so far as the latter costs are not recoverable under Part 4. The fee structure has been designed to be cost neutral and therefore negate the need to use any revenue funding to support the delivery of the scheme. However the fluctuating income and costs will require the continued use of the HMO reserve to allow for the 5 year income and expenditure pattern to be achieved. The fees and charges structure will be reviewed on an annual basis and any changes will be recommended and reported via the budget setting process.
51. The consultation demonstrated that most landlords and agents thought HMO licensing fees were too high, although the five year renewal fee of £413 was felt to be "about right" by 44% of landlords and 43% of agents. Landlords and agents raised comments that paying a fee "punishes good landlords" and we should use a "light touch with a small fee and random spot checks for good landlords" or "fund through alternative means, such as harsher fines or fees for landlords who break the rules".
52. Comments were also made that the fee scheme was "complicated". Oxford City Council does operate HMO licensing differently compared with many other Councils, by issuing licences of varied length linked to compliance. Oxford City Council made it clear in 2011 that a one year licence would be the default to allow the Council to closely monitor conditions and ensure properties were improved. The consultation demonstrated that 71% of organisations, 64% of residents and 50% agents believe the licensing scheme has improved properties – 43% landlords also agreed there were improvements.
53. The current one, two or five year fee structure was introduced in 2016 to ensure that compliant landlords did not "pay" for non-compliant landlords. The Council acknowledges that this makes the scheme more complicated and that landlords also have criticised the "complicated fee structure". However, to have a simple structure with one fee would not benefit compliant landlords.
54. We have reviewed our costs closely and are charging fees that only cover the staff costs, administration, scheme management and enforcement. The consultation requested more information and transparency in how fees were calculated – this is shown in Appendix 6. Fees are calculated across the scheme and not on a per property basis. Operating a "one, two, five" year licence structure allows the Council to calculate the average time spent on that type of licence and therefore, the fees reflect this e.g. a category F "accredited"

landlord pays a lower fee to reflect less time spent on enforcement for those properties.

55. The original fees proposed in the consultation included the cost of purchasing an external provider for an improved ICT processing system – in part to address concerns from landlords regarding application processing being “complicated”. During 2020, the Council has continued to explore solutions for improvements – in this respect, the delay between schemes has given a benefit. Exploring solutions has resulted in more “in-house” design and hence a reduced cost. This has allowed the fees to be reduced.

56. The new fees, as in Appendix 6, are now a 3% increase on 2020/21 fees and so are in line with inflation. For the most compliant landlords who are eligible for the five year renewal, we have held the 2020/21 fee of £413. It is clear that non-compliant landlords pay more - reflecting comments made in the consultation.

- The “Category A” licence new fee proposed of £2,200 is **only** charged when landlords deliberately avoid licensing. While 70% landlords thought this was too high, this fee is for those landlords who have broken the law. It is necessary to charge a high fee to allow the Council to recover the enforcement costs from non-compliant landlords rather than levy them onto the “good” landlords. Having reviewed costs, it will be reduced slightly to £2,058.
- The “Category D” licence renewal fee proposed of £514 is **only** charged when a landlord has failed to comply with licence conditions. This allows the Council to recover our re-inspection costs. We charge this as a “light” touch enforcement, rather than going straight to a financial penalty or revocation of the licence. Again, this allows us to recover costs from non-compliant landlords. Having reviewed costs, it will be reduced slightly to £505.

57. Benchmarking undertaken in early 2020 demonstrates that nationally (excluding London), a landlord would pay £920 for a new HMO licence for five years, but an accredited landlord in Oxford would pay £898. For renewal, nationally (excluding London) a landlord would pay £689 whereas an accredited landlord in Oxford would pay £413 – this is a 40% reduction compared to national average for renewal fees (a saving of £276). Appendix 6 demonstrates equivalent fees paid based on landlord behaviour.

58. To address concerns raised in the consultation regarding the fee system being too complicated, the following changes have been made:

- The Council has removed the proposed fee where landlords fail to renew and need to make a new application – 66% of landlords thought this fee was too high, as did 63% of agents and 63% of those who represented a business. A new online application system and automated reminders will hopefully reduce the number of situations where landlords fail to renew. This will therefore reduce costs – while there will still be some failure to renew, this will be absorbed into the “general” scheme costs.

- To simplify the stage one payments all “New” applications will have the same stage one fee of £277 and “renewal” applications will have a stage one fee of £89. This will assist landlords to apply via an online system that is currently being-developed. This makes it clear that the stage two fee charged (for general scheme costs and enforcement) is based on information submitted during the application process.
- Clarify that a new application where the property is compliant from a landlord / agent that already holds a longer licence, is immediately eligible for a two or five year licence at this point. This is already used in the current scheme.

59. Comments were made in the consultation exercise regarding refunds of fees. Regulations made under the Housing Act 2004 state that a full refund must be given when, at the time the fee was paid, the house was not an HMO or was not an HMO that was required to be licensed. The Council is not legally obliged to refund fees when the house was an HMO at the time of the application and since that time, the house has been sold or is no longer occupied as an HMO. However, a refund criteria was developed under the previous scheme and this will remain unaltered – this is shown in Appendix 6
60. The overall predicted income has been based on the previous HMO licensing scheme and the number of licences known to require a renewal, plus the average number of new licences applications received due to new HMOs entering the market or transfers of licence holder.
61. The predicted income does not include those applications for HMOs which are found to have been in operation for more than 12 weeks. The experience with previous schemes has been that these are particularly hard to predict and any income received from this type of application will be placed in the reserve at the end of the financial year if there is excess income.
62. The predicted income in the first year includes those licences which expired between the end of the last scheme and the start of the new scheme. Whilst these licences will be classed as “new” licences according to the Housing Act 2004, the fee charged will be the appropriate renewal fee. Due to COVID-19, the Council had to delay the consultation resulting in a gap between schemes and it is considered unfair to charge landlords a higher “new” application fee for circumstances beyond their control. The Housing Act 2004 gives the Council the ability to fix fees and so we can apply a “renewal” fee to these “new” applications which reflects their true processing cost.
63. The predicted income includes an inflationary rise of 3% each year which will be applied to fees as part of the budget process.
64. The costs have been calculated for the whole scheme based on the previous scheme costs and the predicted number of licences needed to be processed.
65. The enforcement costs for the scheme do not include costs associated with formal enforcement work, as such costs can be charged to the offender as part of any financial penalty or prosecution costs awarded. It is anticipated that this income will be used to support work on finding unlicensed HMOs, thereby

allowing the fees charged to landlords to reflect lower level enforcement costs. Appendix 6 details the work associated with the licence fees

66. The difference between the cost and income is +/-1%

Year	21/22	22/23	23/24	24/25	25/26	Total
Number of applications	2,646	1,949	1,892	1,709	1,795	9,990
Applications - Processing etc	£ 535,575	£ 395,269	£ 385,210	£ 365,321	£ 392,320	£ 2,073,694
General Costs (Representations/variations /withdrawn applications etc	£ 61,350	£ 46,534	£ 46,543	£ 43,290	£ 46,834	£ 244,551
General Enquiries & Service Requests	£ 124,013	£ 94,063	£ 94,082	£ 87,507	£ 94,671	£ 494,336
Enforcement - non compliance	£ 94,907	£ 97,754	£ 100,687	£ 103,707	£ 106,818	£ 503,873
Landlord Liaison/Promotion	£ 9,802	£ 7,435	£ 7,436	£ 6,917	£ 7,483	£ 39,073
Travel/ICT	£ 10,144	£ 7,694	£ 7,695	£ 7,158	£ 7,744	£ 40,435
Total cost	£835,791	£648,749	£641,653	£613,900	£655,870	£3,395,962
Income	£874,680	£657,140	£641,091	£603,983	£643,200	£3,420,094

67. There will be a “peak” of applications at the start of the scheme and in order to process these in a timely manner, it will be necessary to employ temporary staff in the Applications Team. If we do not, there is a risk that it will take up to a year to issue these licences – this means that the next licence application will occur later than the projected figures and lead to an overall reduction in income. Temporary staff will increase the cost and future year fees can to be increased to cover any shortfall.

Equalities impact

68. The Equalities Impact Assessment is attached in Appendix 8. Following the feedback from the consultation exercise there are a number of actions proposed to address the concerns raised which are included in the assessment.

Level of risk

69. The Risk Register is attached in Appendix 9. There are no abnormal risks identified.

Conclusion

70. The Council believes that the pre-conditions for an Additional Licensing scheme under Part 2 of the Housing Act have been fulfilled and that a significant proportion of HMOs in the Council’s area are being managed ineffectively so as to give rise to one or more problems, whether for HMO occupants or others in the community (Housing Act 2004 s56(2)). With regard to the HMO properties in the area, 45% fall outside of the national requirement for a licence. The 2020 review into the additional HMO licensing scheme shows that whilst there have been improvements in the property conditions and management across the HMO stock, there continues to be over 50% that are not compliant at the time of re-inspection and since this review was completed, evidence shows that non-compliance and problems remain. Therefore it is necessary to make a new

designation for Additional HMO Licensing to these standards and build upon the successes of the previous schemes.

71. Perceptions of the scheme are generally positive and residents and tenants, in particular can see clear improvements. Respondents, from all sides, were of the opinion that living conditions in HMOs have improved and either strongly agreed or agreed that the licensing scheme has improved HMOs. Respondents, from all sides, were of the opinion that not renewing the scheme would have an adverse impact.
72. The housing market in Oxford continues to be buoyant, attracting investors into the rental market, and numbers of HMOs continue to rise which means HMO licensing still has a place in ensuring standards in the sector do not decline and accommodation in this sector is well managed and of a decent and safe standard. Therefore Additional HMO Licensing remains an appropriate solution for the City. This approach is consistent with the priorities set within the Council's Corporate Plan and Housing Strategy.
73. The consultation exercise has highlighted improvements which can be made to the existing scheme, including increasing the accreditation schemes eligible for a longer licence and introducing an online system to improve the application system for applicant. The Council will continue to liaise with licence holders and landlord's representatives to make changes to the proposed scheme when introduced where possible.
74. The licencing scheme is designed to be entirely self-financing, with the fees reflecting the cost of operating the scheme. This will ensure that there is no additional financial burden placed on the Council's budget.
75. The designation of the Additional Licensing Scheme is proposed to last for five years and is considered necessary and proportionate as it is unlikely, or less likely, that the Council would be able to achieve its strategic objectives in a shorter timeframe

Report author	Gail Siddall
Job title	HMO Enforcement Team Manager
Service area or department	Regulatory Services & Community Safety
Telephone	01865 252474
e-mail	gsiddall@oxford.gov.uk

Background Papers: None

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