

EXETER CITY COUNCIL

REPORT TO: SCRUTINY COMMITTEE – COMMUNITY AND EXECUTIVE
DATE OF MEETING: 11 NOVEMBER 2014 AND 18 NOVEMBER 2014
REPORT OF: ASSISTANT DIRECTOR HOUSING
TITLE: ADDITIONAL LICENSING FOR CERTAIN TYPES OF HOUSES IN MULTIPLE OCCUPATION (HMOS) THROUGHOUT EXETER

Is this a Key Decision?

Yes.

Is this an Executive or Council Function?

Executive

1. What is the report about?

- 1.1 This report provides feedback on the outcome of the 10 week consultation exercise undertaken on the proposal to extend the principles of Mandatory HMO Licensing through the introduction of an Additional Licensing Scheme covering specific types of HMOs throughout Exeter. It goes on to seek approval for the Designation of an Additional Licensing Scheme.

2. Recommendations:

- i To make a Designation for an Additional Licensing Scheme, covering the whole of the Exeter City Council administrative area, for the types of HMOs specified in Appendix 1, annex B.
- ii To agree the fee structure detailed in Appendix 2 and the licence conditions detailed in Appendix 3.
- iii To agree the implementation of the Scheme beginning on 23 February 2015
- iv To authorise the Assistant Director Housing, in consultation with the relevant portfolio holder, to periodically review the Scheme, its implementation and resourcing to ensure that the principles of the Scheme are achieved

3. Reasons for the recommendation:

- 3.1 Exeter has an unusually high proportion of privately rented accommodation, estimated to be 24% of the overall housing stock (approximately 12,600 dwellings). This compares with 19% nationally.
- 3.2 Exeter also has an unusually high number of HMOs, estimated at 2,829. Nearly 800 of these are covered by the national Mandatory HMO Licensing Scheme, many of which are student lets. A further 1,200 are small, shared house HMOs, commonly let to students.

- 3.3 These estimates closely match the number of properties which are exempt from council tax, being occupied exclusively by students, which stood at 1,888 in May 2014.
- 3.4 The remaining 800 or so HMOs provide accommodation for working tenants, singles or families, or those on benefits.
- 3.5 The Mandatory HMO Licensing Scheme has proved to be successful in driving up the standards of those HMOs requiring a licence, through the enforcement of licence conditions. However, as indicated above, a large proportion of the HMOs requiring a licence under that Scheme are student shared houses, many of which exceed the minimum standards. This is as a result of the combination of high expectations of students and their parents, the changing demographic of Exeter students and market forces, there being an oversupply of student lets in the private rented sector as a result of competition from national student housing providers.
- 3.6 The types of HMO which are often occupied by the more vulnerable tenants are not covered by Mandatory HMO Licensing. In particular, that Scheme does not cover rented properties in buildings which have been poorly converted into self contained flats, often many years ago when fire safety standards were much lower than they are today, or the majority of flats in multiple occupation above commercial premises or in mixed use buildings. A significant proportion of these HMOs pose an increased risk to their tenants in respect of fire safety and are often associated with poor management. The tenants of these properties, or their visitors, are also frequently linked to complaints about anti social behaviour.
- 3.7 It is specifically these two types of HMO for which a Designation is sought, as defined in appendix 1
- 3.8 The overarching aim of introducing Additional Licensing would be to extend the principles of Mandatory HMO Licensing to these types of HMOs. These are to ensure that properties are suitable to accommodate the number of tenants that they house, have adequate facilities, fire precautions etc and that they are properly managed, through adherence to the conditions attached to the licence.
- 3.9 The standards for facilities and fire safety, which are the same as those enforced through the Mandatory HMO Licensing Scheme, are set out in appendix 4 and 5.
- 3.10 The proposed licence conditions are set out in appendix 3. Mandatory conditions, those which the Council is required to include in HMO licenses by legislation, are in bold. The other conditions are the proposed discretionary conditions aimed at promoting sound management practices whilst tackling regularly encountered local issues, such as unsatisfactory refuse storage arrangements. It is also anticipated that some HMOs will require specifically tailored conditions.
- 3.11 Additional Licensing will also ensure that the licensees of HMOs are considered to be 'fit and proper persons' to undertake their role. No other housing related legislation addresses this 'people' aspect of safety in HMOs.
- 3.12 In order to be considered 'fit and proper', prospective licensees must confirm that they have not:

- Committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);
 - Practiced unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;
 - Contravened any provision of the law relating to housing or of landlord and tenant law
- 3.13 In the event of a Designation for Additional Licensing being made those people or companies who would be required to apply for a licence are detailed in appendix 6.

4. What are the resource implications including non financial resources.

- 4.1 The immediate resource implication, should the decision be made to designate an Additional Licensing Scheme, would be the costs involved in communicating the decision direct to consultees, which must be done with 14 days of the Designation being made. These costs can be met within existing resources
- 4.2 The Housing Act 2004 allows councils to charge a licensing fee. The proposed fee structure has been set at a level that will cover the cost of administering the Additional Licensing Scheme based on the estimated number of HMOs that will become licensable, the estimated staff time and associated costs involved in processing the applications, monitoring and administration including overheads.
- 4.3 A significant proportion of the 'converted building' HMOs that would be subject to Additional Licensing would take the form of large houses divided into self contained flats, each of which, in many cases, will be in separate ownership. In addition many different management models will be encountered. This will make the cost of administering the Scheme significantly higher than for Mandatory HMO Licensing, where much more straightforward ownership structures are the norm.
- 4.4 It is forecast that the introduction of an Additional Licensing Scheme would generate income of approximately £70,000 per annum over its five-year duration and that the Scheme would be self financing, in line with legislation and guidance. Without the introduction of an Additional Licensing Scheme the City Council would not have the resources to routinely inspect these properties, as it has in the past. The majority of the projected income will be received in the financial year 2014/15, at the outset of the Scheme, but that income will be apportioned across its 5 year duration.

5. Section 151 Officer comments:

- 5.1 The number of HMO's affected by the proposed new licensing scheme is not certain and therefore the generation of £70,000 per annum will depend upon actual applications, level of license fee and eligibility for discounts. This will need to be closely monitored by officers with any significant deviations from financial forecasts reported back to committee.
- 5.2 On the basis that costs of implementing the new licensing scheme can be met within approved budgets and that the associated license fee income will be spread over the respective 5 years, in accordance with proper accounting practice, there are no further comments to make.

6. What are the legal aspects?

- 6.1 Prior to 2010 the introduction of Additional Licensing Schemes required the approval of the Secretary of State for Communities and Local Government. The power was devolved to local authorities in April 2010 through the Licensing of Houses in Multiple Occupation and Selective Licensing of other Residential Accommodation (England) General Approval 2010.
- 6.2 Local authorities must demonstrate the need for an Additional Licensing Scheme and consider that a 'significant proportion of the HMOs in their area, of the type proposed to be covered by it, are being managed sufficiently ineffectively' as to give rise, or likely to give rise, to problems for occupiers or members of the public'. They must also have regard to any other courses of action available and demonstrate that the Designation will significantly assist in dealing with the issues.
- 6.3 The City Council's view that these legislative requirements are met were detailed in the report that went to Executive on 24th June 2014.
- 6.4 In order to comply with the requirements of the General Consent local authorities also have to act to consult those most likely to be affected by the Scheme for a minimum of 10 weeks and to respond to those consultees who raise substantive issues.
- 6.5 Should a Designation be made The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006 stipulate the following:
- 6.6 Within 7 days of the Designation being made the City Council must:
 - Arrange for the publication of the Notice of Designation in two local newspapers, further publishing it on 5 more occasions
 - Post the Designation on a public notice board at the Civic Centre and on the Council's web site

Within 2 weeks the Council must:

- Send copies of the Notice to anyone who responded to the consultation and organisations which represent the interest of tenants and landlords or who represent managing agents, estate agents or letting agents in the City
 - Send copies to organisations which provide advice to landlords and tenants, e.g., in Exeter's case, the CAB, St Petroc's etc
 - Allow a minimum three month period between the Designation being made and its implementation (a legislative requirement).
- 6.7 Failure to meet these statutory requirements may lead to a challenge in the form of a request for a judicial review. To mitigate the chances of this the Council has consulted widely, as detailed in the report, and followed the prescribed process and government guidance

7. Monitoring Officer's comments:

- 7.1 As the proposal is in line with the statutory requirements placed on a Council wishing to introduce an Additional Licensing Scheme, there are no further comments to make.

8. Report details:

- 8.1 Following approval to consult on the proposal to introduce Additional HMO Licensing by Executive on 24th June 2014 a large scale consultation exercise began on 7th July 2014. It lasted for 10 weeks, ending on 15th September 2014. The 10 week duration of the consultation was necessary to satisfy the requirements of the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of other Residential Accommodation (England) General Approval 2010, which permits local authorities to designate Additional Licensing Schemes within their area without having to seek the approval of the Secretary of State.
- 8.2 The consultation included:
- Press release to local news media
 - Direct mail outs to:
 - The 2540 landlords known to own property in the city, plus
 - The 87 letting agents and property management companies in Exeter
 - Organisations including the University of Exeter and those providing advice to tenants such as Shelter and the CAB together with the local representative of the National Landlords Association
 - Round robin e mails to all staff in Exeter City Council, Devon County Council, University of Exeter and the Chamber of Commerce.
 - The chairs of all the residents associations known to the Council
 - Ward Councillors
 - A leaflet drop to 2000 houses in the 19 streets known to have a high concentration of HMOs of the type that the council is seeking to licence.
 - Leaflets handed out to visitors to the Council's Customer Services Centre
 - A social media campaign including the use of Twitter and Facebook
- 8.3 All these communications invited recipients to visit the Exeter City Council website to view an outline of the proposal and complete an online questionnaire, similar to that which has been used in other Cities where Additional Licensing has been successfully introduced, or to make comment to a dedicated e mail address.
- 8.4 Alternative arrangements were made available to those without access to a computer.
- 8.5 Copies of the consultation materials are contained in appendix 7
- 8.6 In all 42 completed questionnaires were received , 8 from owner occupiers, 24 from landlords (including 1 letting agent), 8 from private sector tenants, 1 from a residents association and 1 from an organisation representing tenants
- 8.7 Email responses were received from The Student Guild, Citizens Advice Bureau, and 2 HMO landlords. Other emails were received from an owner

occupier, an agent, Exetra and a residents association, all of whom had also completed the questionnaire.

- 8.8 A letter of support was received from Devon and Somerset Fire and Rescue Service
- 8.9 Although the response rate to the consultation was surprisingly low the overwhelming majority of those who responded agreed with the Council's aim to improve conditions, safety standards and management of HMOs in the City with 19 landlords, 8 owner occupiers and 5 tenants agreeing (76% of recipients). Only 2 landlords and 1 owner occupier disagreed, with 5 recipients having no opinion.
- 8.10 19 recipients (10 landlords, 6 owner occupiers and 3 tenants) agreed that additional licensing would contribute to this aim. 16 recipients (9 landlords, 2 owner occupiers and 5 tenants) disagreed, with 6 recipients having no opinion.
- 8.11 The majority of those responding, however, agreed that Additional Licensing would be an effective way to improve substandard HMOs and their management, with 14 agreeing (12 landlords, 1 owner occupier and 1 tenant), 8 landlords disagreeing with 4 landlords having no opinion
- 8.12 Importantly, bearing in mind that one of the primary purposes of introducing Additional Licensing is to improve the level of management of HMOs, only 10 of the 24 landlords who responded belong to a landlords association. Membership of such associations is the only way that landlords can be sure that they will keep up to date with legislative changes and hence their legal responsibilities as landlords.
- 8.13 Of the 14 landlords not in a landlords association, only 4 have ever attended any form of landlord training.
- 8.14 Overall, only 7 of the 24 landlords who responded attend the landlord forums (4 of whom are in landlords associations and have done training). This is a surprisingly low number, considering that the majority of landlords who engaged with the consultation are known to the Council as responsible landlords but it does highlights the 'amateurish' approach that many landlords take to their role.
- 8.15 The lack of a significant response, despite extensive information being made available about the proposed scheme through the methods highlighted above, suggests that the introduction of an Additional Licensing Scheme is not considered a controversial step, possibly since many of the landlords consulted already have HMOs covered by Mandatory Licensing, which has not proved to be as contentious as anticipated when it was introduced.

9. How does the decision contribute to the Council's Corporate Plan?

- 9.1 The introduction of Additional HMO Licensing directly relates to the key actions of 'Help me find somewhere suitable to live': driving up standards in private rental properties' and is wholly consistent with the overall direction of the Council's housing strategies.

10. What risks are there and how can they be reduced?

- 10.1 The initial risk associated with going forward with a Designation is that of a judicial review into the decision to proceed. The consultation has, however, been undertaken with full regard to legislation and guidance contained in both the DCLG's 'Approval steps for additional and selective licensing designation in England' and the guidance produced by Local Government Regulation 'Additional and Selective Licensing under General Consent'
- 10.2 A further risk is that the estimate that there are 400 HMOs which would fall into the scope of Additional Licensing is based on pre 2006 data, when the proactive inspection of HMOs broadly ceased following the introduction of Mandatory HMO Licensing. The true figure, and therefore the projected income, will only become clear should the Scheme be introduced.
- 10.3 Recent experiences would indicate that the major risk would be to tenants' welfare and the Council's reputation should Additional Licensing not be introduced. During the 10 week consultation period one HMO above commercial premises was prohibited from use by the Devon and Somerset Fire and Rescue Service, acting in consultation with the City Council, thus safeguarding the 10-12 residents against a serious fire risk. A second HMO is in the process of being prohibited under Housing Act powers, as a result of a poor layout causing a category 1 fire hazard.
- 10.4 Because there has only been a limited proactive inspection scheme of these types of HMO for some years, resources having largely been diverted into operating the Mandatory Licensing Scheme, much of the recent in-depth involvement with them results from complaints from residents. Those HMOs that have been subject to complaints are often found to have a low level of compliance.

11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

- 11.1 The decision to introduce an Additional Licensing Scheme would have a positive impact in all these respects by ensuring that the standard of the accommodation occupied by, in many cases, young, vulnerable and ethnically diverse tenants, would be improved

12. Are there any other options?

- 12.1 In order to achieve the desired outcome of driving up standards in HMOs other options are available, specifically:
- 12.2 The introduction of a **voluntary accreditation scheme**. Over the last 5 or more years the City Council has been working with the University of Exeter to introduce a voluntary accreditation scheme for student HMOs. Initially the University developed their own scheme but in 2013, after that Scheme had failed to take off, they signed up to the nationally recognised AFS/ Unipol landlord accreditation scheme, specifically developed for student lets. For the academic year 2016/17 it is the University's intention only to promote properties managed by accredited landlords to its students through their accommodation office and web site.
- 12.3 The pitfall, as with any voluntary scheme, is that only responsible landlords, invariably offering good quality accommodation, sign up. During the first year of

the operation of the AFS/ Unipol scheme fewer than 30 landlords letting property to students in the city (out of an estimated 1000-1500) have passed through the inexpensive accreditation process.

12.4 Landlord training. For the past 2 years the Council has actively been promoting one day training courses for landlords, delivered by accredited trainers from the National Landlords Association (NLA). These courses have effectively been subsidised by the City Council through the provision of free training rooms and facilities, being delivered at a cost of £100 per landlord. Despite widespread promotion of the courses, through the landlord forum and newspaper advertising, it has proved difficult to encourage attendance with only four courses going ahead, others having to be cancelled through lack of interest. In all, up to this point, only 38 landlords have attended these courses.

In an effort to improve the professionalism of landlords a number of further training courses have been provisionally booked for January and February 2015 to encourage as many landlords as possible to receive training and thus benefit from a discounted licensing fee.

12.5 A limited Designation. It would be possible to limit the Designation to cover certain types of HMOs in certain streets or wards where 'problem' HMOs are known to be. The problem with this approach is that it sets up inconsistencies with different standards for landlords (and HMOs) across the City. Effectively by limiting the Designation the Council would create a 'post code lottery' which would result in poorly managed properties being missed and tenants in parts of the City remaining at risk.

12.6 Enforcement. Without the introduction of Additional Licensing enforcement would remain the only means of improving standards. Traditional, statutory notice based enforcement has its place in bringing about improvements but it is time consuming being both technically challenging and administratively labour intensive.

Additional Licensing has the potential to be a more efficient method of improving standards, through enforcement of licence conditions. Once the licence has been granted, an administratively burdensome process in itself, stiff penalties are attached for failure to comply with these conditions:

It is an offence if the landlord or person in control of a licensable HMO:

- Fails to apply for a licence for a licensable property
- allows a property to be occupied by more people than are permitted under the licence
- Breaches a condition of the licence.
- Breaches a regulation set out in the Management Regulations for HMOs

Fines of up to £20,000 may be imposed if a licensable HMO is allowed to operate without a licence and £5000 for breaches of any of the licence conditions or Management Regulations.

In addition to this there are other consequences of not licensing an HMO which is licensable

- Tenants can apply to the Residential Property Tribunal to claim back any rent they have paid during the unlicensed period (up to a limit of 12 months).
- Councils can reclaim any housing benefit that has been paid during the time the property was without a licence.

- Landlords cannot use the grounds laid out in Section 21 of the Housing Act 1988 to obtain possession.

No other option is available to ensure that individuals or companies responsible for the management of HMOs are 'fit and proper', a vital consideration, particularly in cases where vulnerable tenants are involved.

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

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