
SUBJECT: LICENSING SCHEME FOR HOUSES IN MULTIPLE OCCUPATION –
CONSULTATION RESULTS AND FINAL APPROVAL

DATE: 18 FEBRUARY 2013

RECIPIENT: OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE

THIS IS NOT A DECISION PAPER

SUMMARY:

Cabinet is scheduled to consider a report of the Cabinet Member for Housing and Leisure Services on 19 February 2013, which seeks approval for designating Bargate, Bevois, Portswood and Swaythling wards as being subject to additional licensing of houses in multiple occupation (HMOs), coming into effect on 1 July 2013 for a period of five years. An evaluation of the scheme by 30 June 2016 is proposed, with the intention of making further designations, as appropriate, across the city.

BACKGROUND and BRIEFING DETAILS:

1. Overview and Scrutiny Management Committee considered the outline proposals for extending the licensing of HMOs in Southampton on 16 August 2012 and Cabinet approved a public consultation on 21 August 2012.
2. The consultation ran for twelve weeks from 3 September 2012 to 26 November 2012 inclusive. It was well-publicised and had a strong response from a broad range of interested parties, including landlords, landlord associations, Hampshire Fire and Rescue Service, residents and residents groups, tenants, universities and housing agencies. 231 questionnaires were returned, many with detailed comments, 11 written submissions were made, approximately 150 people attended three meetings arranged by the council and landlords attended two landlord forums.
3. Two thirds of questionnaire respondents agreed that licensing of all HMO landlords would improve Southampton's rented properties (66%). A very high percentage considered that poorly managed HMOs have a negative impact on their neighbourhood (81%) and a significant majority agreed that well managed HMOs have a positive impact (66%). A significant majority agreed that all HMO landlords should be licensed (69%) and that the council should be doing more to tackle HMO issues (79%).
4. The written submissions contained polarised views, with strong support for the proposals from tenants, residents, Hampshire Fire and Rescue Service and Hampshire Police and strong opposition from most (but not all) landlords and their representative organisations, the National Landlords Association, Southern Landlords Association and the Residential Landlords Association. Hampshire Fire and Rescue Service considers that additional licensing will increase the safety of residents and of the public and states that this is fully consistent with its strategic objective to "keep people safe". Hampshire Police stated that the proposals would assist their ability to deal with crime and anti social behaviour associated with HMOs, in particular in relation to Operation Fortress, which is targeting drug-related violence.

5. Landlords' associations considered the consultation to be flawed, that the use of existing powers and accreditation would better achieve the council's objectives and consider there to be insufficient, inconclusive or out of date evidence to support the proposals for a city wide scheme. Representations made by the landlords' associations have been considered but the council rebuts the assertion that the consultation is flawed in any way. A full and detailed consultation has been carried out, which complied with both the legislation and government guidance.
6. The universities are fully supportive and although Southampton University Students Union considered that overall the proposals would help to ensure a large stock of high quality HMOs in the city, there was concern that sufficient frontline staff should be employed to carry out regular inspections and respond to complaints. Further details of the consultation responses are contained in Appendix 1.
7. All representations made in accordance with the consultation were considered and, as a result, the proposals have been amended as follows:
 - The initial designation will be limited to four wards
 - A decision on whether to extend the scheme will be made in 2016, following a full evaluation of the impact of additional licensing
 - Landlords will be permitted to commission their own survey from an independent, approved surveyor to support a licence application
 - HMOs with three or four occupiers will pay a reduced fee
8. Cabinet is therefore recommended to approve the following on 19 February 2013:
 - (i) To note the outcome of a full consultation, which has taken place in accordance with the Housing Act 2004;
 - (ii) To approve the designation of Bevois, Bargate, Portswood and Swaythling wards as being subject to additional licensing, requiring all houses in multiple occupation (HMOs) to be licensed, apart from section 257 HMOs and buildings exempted by Schedule 14 of the Housing Act 2004, to take effect on 1 July 2013 for a period of five years;
 - (iii) To agree that Cabinet will consider approving a further designation covering the entire city as being subject to additional licensing of houses in multiple occupation from 1 July 2016, subject to an evaluation and further consultation, as appropriate;
 - (iv) To delegate authority to the Senior Manager, Regulatory Services, following consultation with the relevant Director and Cabinet Member for Housing and Leisure Services, to approve any changes to the council's HMO Licensing Policy and Procedures required in connection with the said designation;
 - (v) To delegate authority to the Head of Legal, HR and Democratic Services, following consultation with the Cabinet Member for Housing and Leisure Services, to undertake such actions necessary to enable the successful delivery of the scheme, including the recruitment of Regulatory Services and Legal staff as necessary, to be funded by the scheme.

9. The evidence shows that a significant proportion of houses in multiple occupation (HMOs) in Bargate, Bevois, Portswood and Swaythling wards are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
10. This includes serious problems with poor property conditions, poor management and antisocial behaviour, which are not being adequately addressed through the council's Mandatory Licensing Scheme (which only covers HMOs comprising three or more storeys and occupied by five or more people) and other enforcement and regulatory measures.
11. The council has considered other courses of action, including the use of existing powers under the Housing Act 2004, but has determined that these will not be as effective in dealing with the problems in question.
12. Making the designation will significantly assist the council in dealing with the problems in question without increasing homelessness or the number of empty properties. In conjunction with other courses of action, it will enable the council to focus initially on those areas with the most serious issues and, with costs borne by landlords, will give the council the resources it needs to robustly tackle problems and improve management and standards. This would be a proportionate response to address community concerns about the local impact of HMOs whilst ensuring safe, good quality privately rented accommodation is available to meet housing needs.
13. All reasonable steps have been taken to consult persons who are likely to be affected by the designation and representations have been considered.
14. As a result of representations made during the consultation and a review of the evidence available, it is considered appropriate to evaluate the success of the scheme in Bevois, Bargate, Portswood and Swaythling wards during its first three years of operation, before designating other areas of the city, or the entire city, as being subject to Additional Licensing, as appropriate. Any distortion of the market in undesignated areas will be actively monitored and existing enforcement tools will continue to be used in those areas.
15. A minimum of three months is legally required between making a designation and it coming into force. An additional month is considered prudent to appoint and establish the new team and allow sufficient time for promotion.
16. Section 56(2) of the Housing Act 2004 states that in making a designation for additional licensing the local housing authority should be able to show that it considers a "significant proportion of the HMOs of that description in an area are being managed significantly ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public". Data from the four wards in particular show that this criterion is met. For example, the number of complaints received about the internal condition of HMOs adversely impacting on the health, safety and welfare of occupiers and the landlords of these properties failing to take appropriate steps to address the issues. Residents in these areas also regularly complain about significant and persistent problems with noise nuisance, litter, waste, lettings boards and the external conditions and curtilage (including yards and gardens) adversely impacting upon the general character and amenity of the area in which they are located.

17. Section 57(3) of the Housing Act 2004 states that when making a designation, the council must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector. These have been incorporated into the council's objectives for the proposed scheme, which are to:
- Keep occupants safe by ensuring the effective management of all HMOs
 - Improve living conditions by ensuring that appropriate facilities are provided
 - Improve housing standards and maintenance within HMOs, with a particular emphasis on security, fire safety and thermal comfort
 - Ensure that landlords exercise appropriate management and supervision of their properties to help reduce any adverse impact of HMOs on the neighbourhood and local communities
 - Build on and expand existing partnerships with landlords, managing agents, tenants, universities, community groups and others
 - Encourage and support owners and managing agents of HMOs to work proactively with the council to achieve clearly defined standards and effective management
 - Facilitate stable and integrated communities through policy and the proactive targeting of risk-based and proportionate interventions
 - Reduce the number of complaints about HMOs received by the council and its partners, such as universities and the fire service
 - Have no adverse effect on homelessness in the City
 - Ensure there is not an increase in the number of empty properties
18. Mandatory licensing of HMOs, introduced in 2006, applies only to an estimated 470 properties in Southampton, which have three or more storeys and are occupied by five or more people. Section 57(3)(b) of the Housing Act 2004 states that the authority must not make a designation unless it considers that making the designation will significantly assist in dealing with the problem or problems (whether or not other courses of action are taken as well). The proposed scheme will have comprehensive coverage of HMOs in the designated area, which will enable the council to deal more robustly and effectively with problems associated with HMOs by inspecting them and setting and enforcing licence conditions. This would include specific patrols of areas with high densities of HMOs, which would all require a licence under the scheme. The proposed scheme will give the council sufficient resources to ensure that management and property standards meet the required levels. Mandatory licensing alone is not sufficient to achieve this.
19. These proposals will also help to more effectively integrate licensing and planning enforcement and a comprehensive database of HMOs in the designated area by 30 June 2016 will help considerably with the determination of new planning applications in these four wards aiding the enforcement of Article 4.

20. HMO landlords in the designated area will be able to apply for a licence from 1 July 2013, but applications will be encouraged as follows during the first three years – Bargate Ward in 2013/14, Portswood and Swaythling Wards in 2014/15 and Bevois Ward in 2015/16. Appropriate action will be taken in these areas should HMO landlords fail to apply for a licence. By 30 June 2016, an estimated 4,500 properties in Bargate, Bevois, Portswood and Swaythling Wards will have been licensed, bringing the total number of licensed properties in Southampton to just under 5,000 (including those across the entire City that will continue to be subject to mandatory licensing, as described above).
21. A possible consequence of designating one area of the city, rather than the entire city, is that the private rented market for HMOs will be distorted. This will be actively monitored and, where necessary, the council will use its existing enforcement tools in the undesignated areas, including Improvement Notices and prosecutions for breaches of HMO Management Regulations, which will continue to apply. If there is any pattern of new HMOs emerging in the undesignated areas this will be monitored and if there is a significant increase in HMOs that are poorly managed, any future designation could be brought forward for that area.
22. It is proposed that the designation will not apply to any building which is an HMO as defined by section 257 of the Housing Act 2004, relating to certain converted blocks of flats. Resident landlords with up to two lodgers are not defined as HMOs.
23. The proposed scheme will involve the following checks: determining that the landlord or manager is a 'fit and proper person', making sure that the property is free from serious housing hazards, checking gas and electrical safety certificates, fire safety and waste disposal arrangements. Licensed properties will be suitable for housing people to whom the council owes a duty under homelessness legislation by asking for carbon monoxide detectors and an Energy Performance Certificate (EPC). Licence conditions will deal with antisocial behaviour, waste in gardens and lettings signs. Conditions will be applied to all new licences issued by the council, including for HMOs subject to mandatory licensing, which will continue to apply across the entire City.
24. Persistent failure to apply for a licence or comply with licence conditions could result in prosecution, an application for a Rent Repayment Order and, in very serious cases, for the council to take over the management of a property.
25. The scheme will be evaluated by 30 June 2016 including an evaluation of its impact on housing conditions, community concerns, health and wellbeing and on the supply of good quality, affordable housing.

RESOURCE/POLICY/FINANCIAL/LEGAL IMPLICATIONS:

RESOURCE

26. The most effective use of flexible working arrangements will be made for new and existing staff, including working remotely and the use of "hot desks".

POLICY

27. A council Resolution urging the Executive to apply for Additional Licensing for houses in multiple occupation to cover areas of the City where they are sufficiently badly managed and give rise to problems to occupants or neighbours was made on 22 September 2004.

28. The proposals are consistent with the council's Housing Strategy 2011-2015 and in particular with its objective to focus on privately rented homes in the worst condition. The Private Housing Renewal Strategy 2011-2015 also states that resources should be focused on tackling properties in the worst condition and that licensing will be carried out in accordance with the council's HMO Licensing Policy.
29. In July 2012, the Housing Strategy Action Plan was updated to incorporate a commitment to bring forward an Additional Licensing Scheme for houses in multiple occupation by April 2013, following consultation, to improve the management of this type of accommodation.

FINANCIAL

30. There are no capital implications.
31. Section 63 of the Housing Act 2004 gives the council the statutory power to charge fees for HMO licensing, including additional licensing. In particular, section 63(3) states that the council may, "require the application [for an HMO licence] to be accompanied by a fee fixed by the authority." No Regulations have been made under the Housing Act 2004 or any other Act that specify the maximum fees that are to be charged. However, section 63(7) of the Housing Act 2004 will be complied with: "When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account – (a) all costs incurred by the authority in carrying out their functions under this Part [HMO licensing], and (b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to HMOs [Management Orders] (so far as they are not recoverable under or by virtue of any provision of that Chapter)."
32. The HMO licensing fees will be set at a level that is reasonably expected to cover the costs of providing the service based on estimated officer time and associated costs involved in processing the applications, inspections, monitoring and enforcement as well as relevant overheads. A higher or "penalty fee" is proposed for non-compliant landlords, in common with the current mandatory licensing scheme. Taking into account comments made during the consultation, a sliding scale of fees is proposed, with lower fees for properties occupied by three or four people. A lower fee is also proposed for applicants who commission their own survey from an approved, independent surveyor. The proposed fees are set out in Appendix 2.
33. The experience of mandatory licensing is that around 10 per cent of landlords are likely to commission their own survey(s), while 90 per cent will prefer to use the council's services.
34. Income from the scheme would be ring-fenced for spending on regulating HMOs, including property inspections and ensuring compliance with licence conditions. The scheme will fund an additional 15 new full time equivalent (FTE) posts in Regulatory Services, which will bring the number of Regulatory Services staff working on HMO licensing to 18 FTEs, including an additional post in City Patrol. In addition, the equivalent of 1 FTE Solicitor in Legal Services will be funded by the scheme.
35. The proposed fees will also apply to properties subject to mandatory licensing and will be reviewed annually and in the event of the scheme being extended from 1 July 2016.

LEGAL

36. A local Housing Authority can designate the area or an area within its district for Additional HMO Licensing pursuant to Section 56 Housing Act 2004. For the scheme to be lawful the Local housing Authority must comply with the specific sections, Section 56 to 59 inclusive of the Housing Act 2004 and also follow the Communities and Local Government guidance, entitled “ Approval steps for additional and selective licensing designations in England”.

The legislation states that the authority 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 to those occupying the HMO or for member of the public.

Before making the designation the authority must:

- a. take reasonable steps to consult persons who are likely to be affected by the designation , and
- b. consider any representations made in accordance with the consultation and not withdrawn

The council must have regard to any information regarding the extent to which any codes of practice have been complied with by person managing HMOs

The council must ensure that any exercise of the power is consistent with the council’s overall Housing Strategy and must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti social behaviour.

The council must not make a particular designation unless:

- (a) it has considered whether there are any other courses of action available to them that might provide an effective method of dealing with the problem/s, and
- (b) it considers that making the designation will significantly assist them with dealing with the problem/s

The Government Guidance provides further information about how the council could comply with these requirements. In particular with regard to the requirement to consult it confirms that the council must give a detailed explanation of the proposed designation, explaining the reasons for the designation, how it will tackle specific problems, and the potential benefits.

37. Designation of the wards subject to additional licensing cannot come into force unless the designation has been confirmed by the Secretary of State, or falls within a general approval. The proposed designation falls within the 2010 General Approval. If a designation is made, section 59 of the Housing Act 2004 provides for publication of a notice confirming the fact of designation.
38. Limiting the designation to Bargate, Bevois, Portswood and Swaythling wards, which have the most HMO problems, reduces the risk of a successful legal challenge to the scheme, as there is strong evidence of a significant proportion of HMOs in these areas being poorly managed.
39. Any additional designation made would require a further period of consultation for a minimum of ten weeks, with persons who are likely to be affected by it.

OPTIONS and TIMESCALES:

40. Alternative options have been considered and rejected, including an option for the council to manage issues associated with HMOs without any Additional Licensing designations. The Article 4 Direction now means that planning permission is required for all new HMOs in the City, but this does not apply to existing HMOs. A 'virtual HMO' team, made up of all council services involved in regulating HMOs, has targeted enforcement effectively, but the proposals would enable a more proactive approach in those wards with the worst problems and will assist the council in dealing with HMO issues.
41. Section 57(4) of the Housing Act 2004 requires the council to consider alternatives to licensing that might provide an effective method of dealing with the problems in question. An evaluation of the following options was carried out: do nothing, reactive inspection programme, proactive inspection programme, landlord accreditation scheme, use of Management Orders, use of the Article 4 Direction and city wide licensing.
42. Subject to Cabinet approval on 19 February 2013, the designation will become effective on 1 July 2013.

Appendices/Supporting Information:

- 1 Draft consultation response
- 2 Proposed fees

A technical appendix containing a summary of the evidence collated to support the proposals is also available on request from Paul Juan (contact details are below).

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