

DECISION-MAKER:	CABINET		
SUBJECT:	LICENSING SCHEME FOR HOUSES IN MULTIPLE OCCUPATION – CONSULTATION RESULTS AND FINAL APPROVAL		
DATE OF DECISION:	17 JULY 2018		
REPORT OF:	CABINET MEMBER FOR SUSTAINABLE LIVING		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY			
NOT APPLICABLE			
BRIEF SUMMARY			
Approval is sought 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 st October 2018 for a period of five years.			
RECOMMENDATIONS:			
	(i)	To note the outcome of a full consultation, which has taken place in accordance with the Housing Act 2004 and to consider and take into account the consultation responses in making a decision on this matter.	
	(ii)	Subject to (i) above, 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 from 1 st October 2018 for five years.	
	(iii)	To delegate authority to the Director of Transactions & Universal Services to approve any changes to the Councils HMO licensing Policy and procedures as amended and / or extended as set out above required in connection with the said designation.	
REASONS FOR REPORT RECOMMENDATIONS			
1.	The current Additional HMO licensing scheme that covers Bevois, Bargate, Portswood and Swaythling has been running since 1 st July 2013 and will expire on 30 th June 2018. The scheme requires that all HMO properties (other than those covered by the Mandatory Licensing scheme and HMO's governed by S257 of the Housing Act 2004) with three or more occupiers from two or more households are licensed and must comply with any licence conditions including conditions relating to standards for safety and amenities set by Southampton City Council. It is not lawful to extend the designation, a new designation would need to be approved if the council wished the area to be subject to a licensing scheme.		

2.	The current scheme has issued over 3600 licenses.. The scheme has dealt with issues of poor property conditions, poor management and anti-social behaviour & ultimately raising the safety standards of the HMO stock. This ensures safe, good quality private rented accommodation is available to meet housing needs in the city.
3.	The evidence obtained over the five years of the additional scheme does however indicate that despite many positive outcomes of the scheme a significant proportion of houses in multiple occupation in these four wards are still being sufficiently ineffectively managed 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
4.	The current Additional Licensing Scheme that covers the proposed ward has ensured that the Council's objectives for the scheme have been achieved. The main objective being to improve housing conditions within this type of property to ensure the health and safety of the tenants. The scheme has enabled that concerns and complaints about conditions and the impact of the property on the local community can be addressed effectively and promptly, such as noise nuisance & anti-social behaviour and issues with waste and letting boards. The numbers of complaints about HMOs have fallen since the Additional Scheme was introduced in 2013.
5.	The Council has considered other courses of action that are available to it to achieve the Council's objectives to tackling these problems, including the use of existing powers under the Housing Act 2004, but consider these would not provide an effective method of achieving the objectives and believe that the designation would significantly assist the Council in achieving these objectives. The Council's objectives for the proposed Additional licensing scheme are set out in paragraph 29.
6.	The current additional scheme has ensured that the smaller HMOs not included in the Mandatory licensing scheme are adequately regulated. Currently Mandatory licensing of HMOs only includes those with three or more storeys and five or more occupants.
7.	The Housing Act 2004 requires a public consultation on proposals for an Additional Licensing Scheme to be carried out before any designation could be considered. That consultation has now been completed and all reasonable steps have been taken to consult persons who are likely to be affected by the designation and representations have been considered.
8.	Ensuring that the Director of Transactions & Universal Services has delegated authority under the officer scheme of delegation to determine and alter as necessary a scale of reasonable fees for the licensing of HMOs for any changes required to the Councils HMO licensing policy or procedures will help ensure its smooth implementation from 1 st October 2018
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED	
9.	That the Council manages the issues associated with HMOs without an Additional Licensing Scheme. The Mandatory HMO Licensing regime is to be extended from 1 st October 2018 to include all HMOs with five or more occupiers irrespective of how many storeys the HMO has. This will decrease the number of properties covered by the proposed Additional Scheme to approximately 1750 (47% reduction). Whilst the new mandatory scheme will ensure larger HMOs will be regulated, there will still be a

	<p>significant number of HMOs that are not licensable. The Mandatory scheme will also not cover any of the large purpose built student accommodation blocks within the city. These blocks contain several hundred licensable HMOs across the city and through licensing we can ensure that this accommodation is sufficiently regulated. There is still a significant fire risk in this type of accommodation and the smaller HMOs and through additional licensing the council will be able to deal with these issues effectively. Therefore the proposed designation will enable a more proactive and comprehensive approach and will significantly assist with dealing with identified problems associated with the high density of HMOs in these four wards.</p>
10.	<p>The council could solely rely on powers contained within Part 1 of the Housing Act 2004 & The Houses in Multiple Occupation (Management) Regulations 2009 to deal with issues associated with HMOs. This approach is restrictive as relies on complaints being received about property conditions. It is not a proactive programme and does not tackle poor practices of rogue landlords and would not provide a detailed information about HMO properties in Southampton. The council has therefore determined that these powers alone would not sufficiently address the problems that have been identified with HMO's in the area and would not provide an effective method of achieving the council's objectives</p>
11.	<p>The Council could consider a City wide scheme for smaller HMOs or could extend the designated area to cover other wards not included in the current additional schemes. However there is insufficient evidence to show that there are sufficient numbers of HMOs that are poorly managed outside of the designated wards. Also the extended mandatory licensing regime being implemented in 2018 will bring more HMOs under licensing control, so widening the additional scheme is not considered proportionate.</p>
<p>DETAIL (Including consultation carried out)</p>	
12.	<p>Southampton has a very large private rented sector, estimated at 24,000 properties. HMOs make up over a quarter of this stock and the Council has been keen to ensure that these types of properties are well managed and that the housing needs of a wide range of private tenants are met.</p>
13.	<p>The cost of the scheme, including costs associated with verification and processing of licences, monitoring and unrecovered enforcement costs of licence conditions will be paid for by the licence fee. The licence fee will be set to cover the property for a five year period..</p>
14.	<p>The license fees are set to remain the same as the current scheme. Please see appendix 2 for the pricing schedule.</p>
15.	<p>It will be an offence to operate an unlicensed HMO in the designated area. Failure to apply for a licence or comply with licence conditions could result in prosecution and since the additional scheme was introduced in 2013 there have been 15 successful prosecutions of landlords by the Council for failure to licence their HMOs.</p>
16.	<p>The proposed designation will not apply to any building which is a HMO as defined by section 257 of the Housing Act 2004 nor any HMO licensable by the Mandatory licensing regime.</p>
17.	<p>The current Mandatory licensing regime applies throughout the UK currently and covers the larger HMOs which present the highest risks to the safety of the occupants. These are those HMO's with five or more occupiers (who are</p>

	not living together as a single family or other household), of three storeys or more. In Southampton we have approximately 570 Mandatory HMO licensed properties. From 1 st October 2018 the Mandatory licensing regime will be extended to include all HMOs with five or more occupiers regardless of the number of storeys. It is estimated that the new regime will increase the number of Mandatory HMO licences to over 3000 across the city.
18.	It is currently estimated that there are between 6000-7000 HMOs within Southampton. The current Mandatory and two additional schemes have licensed over 4800. The widening of the Mandatory regime will bring more HMOs across the city into the licensing schemes, particularly those in the wards not covered by additional licensing, including Bitterne, Woolston & Coxford.
19.	The Councils evidence suggests that the HMO licensing regime has had a significant impact on complaints about HMOs. There has been a 75% reduction in complaints about housing conditions reported by tenants. Complaints about noise nuisance and waste issues have also fallen by over 50%. This demonstrates the effectiveness of the scheme in improving HMO management and dealing with complaints. A new designation would enable this reduction in complaints to be maintained and improved further.
20.	The current additional licensing scheme for these four wards has seen 3626 licences issued of which approximately 58% were issued with specific conditions. The current evidence suggests that over 62% of these properties are fully compliant with their specific conditions. This shows that 1377 properties (38% of HMO's) in these 4 wards are still non-compliant and demonstrates that there is a significant proportion of HMO's within this area that are being managed sufficiently ineffectively and could give rise to particular problems for the occupants. This demonstrates that there is still work to do to raise standards and improve HMO management and without a further additional scheme this will be much harder to achieve. The further designation will significantly assist the council in achieving its objectives which are to raise the standards of management so that the problems identified are significantly reduced or removed so that they no longer have a detrimental effect on the area.
21.	One of the main areas where specific conditions have not been complied with is regarding fire safety provisions. Failure to comply with specific conditions regarding the fire detection system accounted for approximately 63% of non-compliant properties. Enforcement of these conditions will be improved under the new scheme with conditions monitoring being increased and more robust enforcement introduced.
22.	Section 56(3) of the Housing Act 2004 requires that before making a designation of an area subject to additional licensing 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 consultation was approved by Cabinet on 19 th February 2018 and ran for twelve weeks from 27 th February 2018 until 22 nd May 2018.
23.	The consultation was well-publicised and had a strong response from a broad range of interested parties, including landlords, landlord associations, tenants, residents and residents groups. 452 online questionnaires were completed, many with detailed comments and there were also 3 written submissions made.

24.	The majority of respondents (71%) were in favour of the overall scheme proposals and 75% believed that the correct area had been selected to form the proposed scheme. There was strong support (85%) that all HMOs in this area should be included. The majority of responses (87%) either agreed or strongly agreed that the proposals for the scheme would improve the internal housing conditions within the HMOs and the external conditions (85%). There was firm agreement that the scheme would ensure the health & safety of the tenants (89%) and 85% agreed or strongly agreed that the scheme would reduce anti-social behaviour in the area. Overall 76% of respondents felt that the scheme would have a positive impact on their community.
25.	From the detailed comments, there were 21 respondents who felt that the proposed scheme would impact negatively on affordable housing, with licensing costs being passed onto tenants and rents being raised. But there were also 18 comments that felt the scheme would have a positive impact as it would raise housing standards.
26.	With regards suggestions and alternative options, 45 respondents felt that the scheme should have more impact on the external condition of the HMOs and there were 35 suggestions about improving issues with rubbish disposal. A number of suggestions were made about improving enforcement of the scheme (30) and that penalties for landlords should be harsher (34).
27.	The written submissions contained differing views, with strong support for the proposals from one resident group & support from the University of Southampton. The National Landlords Association was more cautious and expressed concerns about issues such as the impact of the proposed scheme on existing other services, the housing market being distorted and the fees being passed onto the tenants. Full details of the responses and consultation results are available in Appendix 3
28.	All representations made in accordance with the consultation have been considered. Most notably we have considered comments relating to the fees. The license fees for this scheme will not be increased and we will be offering a 50% discount to landlords that have licensed within the last three months of the first additional scheme to reflect the reduced time in licensing and monitoring these properties.
29.	<p>Section 57(3) of the Housing Act 2004 states that when making a designation, the council must also seek to adopt a coordinated 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:</p> <ul style="list-style-type: none"> • 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

	<ul style="list-style-type: none"> • 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
30.	This proposed additional licensing scheme, in conjunction with the other additional scheme (in Shirley, Freemantle, Millbrook & Bassett) and the Mandatory regime will assist with planning enforcement, helping considerably with determining new planning applications and aiding enforcement of the Article 4 directive. This will be achieved by the detailed records held on HMO properties within the city and through shared working protocols between planning and HMO licensing.
31.	HMO landlords within the four wards of Bevois, Bargate, Portswood & Swaythling will be able to apply for a license from 1 st October 2018. The proposed fees structure offers a reduced rate to those that are timely and compliant, which are applications within three months of the scheme being implemented. Any applications received from properties which fall under the new widened Mandatory licensing scheme from 1 st October 2018, will be licensed under the Mandatory scheme. The Mandatory license is renewed every five years. The application process and fees will be the same for both schemes.
32.	Applications will be encouraged from all four wards from 1 st October and appropriate action will be taken should HMO landlords fail to apply for a license. The scheme will be advertised prior to October 1 st and any applications received prior to this will be processed but will not become effective until the start date of the scheme.
33.	Persistent failure to apply for a licence or failure to comply with licence conditions could result in prosecution, the issuing of a Civil Penalty Notice, an application for a Rent Repayment Order and, in very serious cases, for the council to take over the management of a property. For those landlords convicted of a Housing Act 2004 offence, or subject to two Civil Penalty notices, a banning order could be applied for, preventing the landlord from operating a HMO or any private accommodation. Those landlords that receive a banning order will also be placed on a national Rogue Landlord Database.
34.	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. All licensed HMOs must comply with Southampton City Councils (SCC) HMO standard conditions (see appendix 4). Specific licence conditions can also be applied where appropriate and can deal with a number of issues including antisocial behaviour, waste in gardens, standards and amenities (See appendix 4 for further details on specific condition types). The SCC standard HMO 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.
35.	Any HMO licensed property issued with specific conditions will be subject to a conditions monitoring visit. Failure to comply with specific conditions by the

	agreed date will result in additional fees and could lead to prosecution and/or the issuing of a civil penalty notice.
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RESOURCE IMPLICATIONS

Capital/Revenue

36.	There are no capital implications																																																								
37.	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.”																																																								
38.	The HMO licensing fees will be set at a level to cover the costs of providing the service based on officer time and associated costs involved in verification, processing the applications, inspections, monitoring and enforcement as well as relevant overheads. The pricing schedule is unchanged from previous licensing schemes and is detailed in appendix 2. Any shortfall will be met from existing cost centre budgets. The cost of a typical five year licence is £560.																																																								
39.	Income from the scheme will be earmarked for spending on regulating licensable HMOs within the proposed scheme to ensure compliance with the Legislation. The Council is not permitted to make financial gain from the fees through the licensing process. The fee charged is used to cover the costs associated with administering the HMO licensing schemes.																																																								
40.	<p>The scheme will fund the staff resource which includes PEHO (1.0 FTE), EHO (1.0 FTE), HMO Surveyors (3.5 FTE), HMO Warden (2.0 FTE)</p> <table border="1"> <thead> <tr> <th></th> <th>2018/19</th> <th>2019/20</th> <th>2020/21</th> <th>2021/22</th> <th>2022/23</th> <th>Total</th> </tr> <tr> <th></th> <th>£</th> <th>£</th> <th>£</th> <th>£</th> <th>£</th> <th>£</th> </tr> </thead> <tbody> <tr> <td>Total projected fees</td> <td>1,176,800</td> <td>504,600</td> <td>84,000</td> <td>42,000</td> <td>42,000</td> <td>1,849,400</td> </tr> <tr> <td>Staff costs</td> <td>-301,614</td> <td>-301,614</td> <td>-301,614</td> <td>-301,614</td> <td>-301,614</td> <td>-1,508,068</td> </tr> <tr> <td>Other direct costs</td> <td>-15,081</td> <td>-15,081</td> <td>-15,081</td> <td>-15,081</td> <td>-15,081</td> <td>-75,403</td> </tr> <tr> <td>Overheads</td> <td>-34,836</td> <td>-34,836</td> <td>-34,836</td> <td>-34,836</td> <td>-34,836</td> <td>-174,182</td> </tr> <tr> <td>Total projected costs</td> <td>-351,531</td> <td>-351,531</td> <td>-351,531</td> <td>-351,531</td> <td>-351,531</td> <td>-1,757,653</td> </tr> <tr> <td>Estimated surplus</td> <td>825,269</td> <td>153,069</td> <td>-267,531</td> <td>-309,531</td> <td>-309,531</td> <td>91,747</td> </tr> </tbody> </table>		2018/19	2019/20	2020/21	2021/22	2022/23	Total		£	£	£	£	£	£	Total projected fees	1,176,800	504,600	84,000	42,000	42,000	1,849,400	Staff costs	-301,614	-301,614	-301,614	-301,614	-301,614	-1,508,068	Other direct costs	-15,081	-15,081	-15,081	-15,081	-15,081	-75,403	Overheads	-34,836	-34,836	-34,836	-34,836	-34,836	-174,182	Total projected costs	-351,531	-351,531	-351,531	-351,531	-351,531	-1,757,653	Estimated surplus	825,269	153,069	-267,531	-309,531	-309,531	91,747
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Property/Other

41.	There are no property implications. Existing staff have sufficient accommodation and make use of flexible working arrangements.
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LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

42.	Before designating an area as additional HMO licensing Scheme, the Council must comply with the specific requirements set out within sections 56 and 57 of the Housing Act 2004. This includes being satisfied that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to
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	<p>one or more particular problems either for those occupying or for members of the public.</p> <p>The Council must consider whether there are any other courses of action available to them that might provide an effective method of achieving the objectives of the proposed designation and how approval of the designation will significantly assist the council in achieving its objectives. Statutory public consultation must also take place and the representations made during the consultation period must be taken into account before any decision is made on whether to designate the area. The proposed scheme must be consistent with the authority's housing strategy and the council must adopt a coordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour.</p>
Other Legal Implications:	
43.	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 sets out the publication arrangements that need to be undertaken before the scheme can come into force.
44.	The council has a duty under section 17 of the Crime and Disorder Act 1998 when exercising its various functions to have due regard to the likely effect on, and the need to do all that it reasonably can to prevent, crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and the misuse of drugs, alcohol and other substances in its area and re-offending in its area.
	In formulating the Scheme the Council is satisfied that the Policy and procedures comply with the public sector equality duty as set out in s.149 Equality Act 2010 and a full EISA has been completed to support the proposals and is available to decision makers in determining this matter.
	The proposals in the report are compliant with the Human Rights Act 1998 and in particular the protocol on the protection of property within the Convention. The measures set out in the licensing scheme that restrict the development of property to be used as a HMO are proportionate to the legitimate aim of controlling development and occupation within specified areas of the City to avoid over development of certain types and are necessary to maintain a balance of housing provision within key areas of the City that might otherwise suffer from a shortage of affordable and family homes to the detriment of the wider city community.
RISK MANAGEMENT IMPLICATIONS	
45.	The Council has a statutory duty to conduct an adequate consultation and must consult persons likely to be affected by the designation of a HMO licensing area. If the Council does not approve the consultation then it cannot proceed with planning an Additional HMO licensing area as any designation would then be unlawful. This consultation was approved by the Council was carried out.
POLICY FRAMEWORK IMPLICATIONS	
46.	The recommendations are consistent with the Housing Strategy 2016-2025.
KEY DECISION?	Yes

WARDS/COMMUNITIES AFFECTED:	Bevois, Bargate, Portswood and Swaythling	
<u>SUPPORTING DOCUMENTATION</u>		
Appendices		
1.	Evidence to support Additional Licensing	
2.	HMO license proposed pricing schedule	
3.	HMO consultation feedback report	
4.	HMO license conditions	
Documents In Members' Rooms		
1.	MRD - ESIA	
2.	MRD - DPIA	
Equality Impact Assessment		
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.		YES
Data Protection Impact Assessment		
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out?		YES
Other Background Documents		
Other Background documents available for inspection at: HMO licensing. Civic Centre, Ground floor West Wing. Civic Centre Road, Southampton. SO14 7LY		
Title of Background Paper(s)		Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	Equality & Safety Impact Assessment in relation to scheme	
2.	Data Protection Impact Assessment in relation to scheme	