

Housing Cabinet Member Meeting

Agenda Item 72

Brighton & Hove City Council

Subject:	Additional Licensing for Houses in Multiple Occupation (HMO) Consultation & Amendment of Standards for Licensed HMOs.		
Date of Meeting:	18 January 2012		
Report of:	Strategic Director Place		
Contact Officer:	Name:	Martin Reid	Tel: 293321
	E-mail:	Martin.reid@brighton-hove.gov.uk	
Key Decision:	Yes/No	No	
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 Brighton & Hove has one of the highest levels of Houses in Multiple Occupation (HMOs) in the Country. Over 800 full HMO licences have been issued in the City to date under the existing mandatory HMO licensing scheme. However, resident and community feedback, consultation and other evidence has led us to consider our response to issues arising in wards where we have very high concentrations of smaller HMOs that our current licensing scheme doesn't cover.

Additional licensing proposals extend to all smaller HMOs meeting criteria identified in this report not just those occupied by students. Proposals are not limited to and do not seek to target student households. The Student Housing Strategy 2009-2014 did include in its action points a recommendation that the Council considers the implementation of additional licensing schemes in the City where over-concentration of HMOs has been identified.

- 1.2 January 2011 Housing Cabinet Member Meeting approved the initiation of a 12 week consultation on additional licensing of Houses in Multiple Occupation (HMO) of two or more storeys and three or more occupiers in the wards of Hanover and Elm Grove, Moulsecoomb and Bevendean and St Peters and North Laine, Hollindean & Stanmer and Queen's Park, the wards with the highest concentrations of smaller HMOs.
- 1.3 This paper updates Housing Cabinet Member Meeting on the progress of consultation on the proposal to introduce additional licensing for smaller HMOs in the wards identified. This includes information & feedback gathered to date as part of the initial evidence gathering stage.
- 1.4 This paper proposes extension of consultation on proposals to introduce additional licensing of HMOs in the identified wards in light of: evidence gathered to date; additional information on concentrations of HMOs in the wards indicated;

feedback received on initial consultation & ongoing issues raised by community groups and residents.

- 1.5 In addition, we wish to ensure consultation is compliant with updated guidance from Local Government Regulation (formerly LACORS) on local authority consultation on such schemes in order that any evidence presented to Cabinet Member for any final decision on additional licensing is compliant with the relevant Housing Act 2004 legislation and guidance.
- 1.6 We also propose to consult upon proposed changes to the Brighton & Hove City Council Standards for Licensable HMOs.
- 1.7 The paper includes information on fees & charges in compliance with reporting requirements of the Council's Corporate Fees & Charges Policy.

2. RECOMMENDATIONS:

- 2.1 That the Cabinet Member for Housing notes the update on the progress of consultation on the proposal to introduce additional licensing for smaller HMOs in the wards identified.
- 2.2 That the Cabinet Member for Housing notes authority under existing scheme of delegation for Strategic Director Place to extend consultation on additional HMO licensing of HMOs of two or more storeys and three or more occupiers in the wards identified and on proposed changes to the Brighton & Hove City Council Standards for Licensable HMOs between January 2012 and March 2012.
- 2.3 That the Cabinet Member for Housing note that the fees for existing mandatory HMO licences remain unchanged for 2012/13.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

A. Consultation on the Proposal to Introduce Additional Licensing

- 3.1 Housing Cabinet Member Meeting on 5 January 2011 approved the initiation of a 12 week consultation on additional HMO licensing of HMOs of two or more storeys and three or more occupiers in the wards of Hanover and Elm Grove, Moulsecoomb and Bevendean and St Peters and North Laine, Hollindean & Stanmer and Queen's Park, the wards with the highest concentrations of smaller HMOs, including student HMOs, as identified in the Student Housing Strategy action plan.
- 3.2 Under additional licensing proposals landlords and managers would have to:
 - meet appropriate personal and professional standards of conduct;
 - upgrade poorer buildings to minimum health and safety standards including fire and electrical safety;

- exercise appropriate management and supervision of the buildings to help reduce any adverse impact of HMO on the neighbourhood;
 - Meet council standards for licensable HMOs.
- 3.3 Brighton & Hove has one of the highest levels of HMOs in the Country.
- 3.4 On 6 April 2006 national licensing for certain categories of Houses in Multiple Occupation (HMOs) came into effect as required by the Housing Act 2004 (The Act). Since then there have been nationally prescribed criteria that describe which HMOs must be licensed, plus the provision for local housing authorities to pursue additional licensing areas – defined geographically and/or by HMO type – if appropriate.
- 3.5 The Housing Act 2004 introduced a statutory duty on local authorities to licence privately rented HMOs that are of three or more storeys housing five or more persons forming two or more households. The Council currently licences over 800 HMOs of three or more storeys which have 5 or more tenants across the City.
- 3.6 The highest concentrations of mandatory licensed HMOs occurs in the 5 wards identified in this report. These wards also having the highest overall over -concentration of HMOs including smaller unlicensed HMOs.
- 3.7 Recent mapping of concentrations of HMOs & Student Housing by Planning (Appendix 2) in order to inform their consultation on Article 4 direction in relation to proliferation of HMOs in certain parts of the City identifies streets within the 5 Lewes Road wards where there are particularly high concentrations of HMOs. This mapping utilises information on homes licensed under the existing mandatory scheme and Council Tax exempt shared houses occupied by undergraduates. This will not show other small shared HMOs not currently licensed but occupied by non-undergraduate households, but gives a good indication of levels of over concentration in more detail than was previously available.
- 3.8 The Housing Act permits a local housing authority to designate additional licensing area(s) if occupiers of HMOs or members of the public are being caused problems due to sufficiently ineffective management. Such ‘areas’ can be defined geographically and/or by type of HMO.
- 3.9 Many HMOs in the City, especially smaller HMOs, are occupied by students. However, any additional licensing of smaller HMOs will focus on all smaller HMOs meeting criteria, not just those occupied by students, in the 5 wards identified as having the highest concentration of HMOs.
- 3.10 While recognising the many benefits that students bring to the city, and supporting the role of the private rented sector, and many excellent landlords, in providing accommodation for students the Student Housing Strategy 2009 – 2014 acknowledges the negative effects that can arise for local neighbourhoods and associated risk to community cohesion and social

relations where over concentration of student households and HMOs in general occur. In light of this the Student Housing Strategy includes in its action points a recommendation that the council considers the implementation of additional licensing schemes in the City, identifying areas which may be appropriate for additional licensing.

3.11 Before making an additional licensing designation a local housing 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 to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public;
- have regard to any information regarding the extent to which any approved codes of practice have been complied with by people managing HMOs in the area in question;
- 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;
- consider 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);
- consult people likely to be affected by the designation;
- ensure that the exercise of the power is consistent with their overall housing strategy;
- seek to adopt a coordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by them or others;
- consider whether there are any other courses of action available to them that might provide an effective method of achieving the objective(s) that the designation would be intended to achieve;
- consider that making the designation will significantly assist them to achieve the objective(s) (whether or not they take any other course of action as well).

3.12 Some buildings that would otherwise be HMOs are excluded from mandatory HMO licensing and these are also excluded from additional licensing. They include:

- Buildings where the person managing or having control of it is a local housing authority, a police authority, a fire and rescue authority, a health service body or a body which is registered as a social landlord;
- Certain buildings where the occupation is regulated under other enactments, such as those governing detention centres, children's homes and care homes;
- Certain buildings occupied by students which are controlled by the educational establishment that the students attend;
- Buildings occupied principally for the purpose of a religious community whose principal occupation is prayer, contemplation, education or the relief of the suffering.

3.13 In addition, additional licensing proposals would not cover premises which are not HMOs or those which are, under Schedule 14 of the Housing Act 2004, not HMOs for licensing purposes. These include:

- Houses occupied by single households;
- Houses where there are up to 2 lodgers in addition to the main household;
- Households that act as host families for foreign students studying for short periods in these areas;
- Tenants of Housing Associations;
- Student accommodation operated or owned by an approved educational establishment.

3.14 Brighton & Hove City 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 proposed under the additional scheme are being managed significantly ineffectively. Consultation must also take place and the scheme must be consistent with the authority's overall housing strategy.

3.15 Results of initial Evidence Gathering Consultation

The initial consultation on additional Licensing for HMOs took place from 5 January 2011 to 30 March 2011, including via the council's Consultation Portal. A total of 183 responses-were received

- 73% of those who responded disagreed with the proposal to introduce additional licensing.
- Of those who responded nearly half (46%) declared themselves as landlords or lettings agents and they were overwhelmingly opposed to the proposal (98%). Many were concerned that the costs would put a lot of landlords out of business and couldn't understand how licensing would deal with anti-social behaviour. Many asked that the council use the powers we already have to tackle the problem before taking this step.
- Landlords & lettings agents were also concerned to clarify the standards that would be applied to HMOs under any additional licensing scheme.
- The majority of owner occupiers were in favour of additional licensing (54%). Many wanted to see more controls on the numbers of students in a property and improvement in the poor quality of many of these homes.
- The majority of private tenants were against the proposal (85%). Many cited concerns that the costs would be passed to them.
- Resident groups were generally supportive of the proposal – on the portal & in written responses each resident group's reply is counted as one response which does mean that one response on behalf of a group who support the proposal may under-report the extent of those in agreement with the proposal.

3.16 Reasons for the Extension of consultation

A decision to adopt an additional HMO licensing scheme would lie with the local authority Housing Cabinet Member providing they are satisfied that the specified criteria have been met.

The aim of the proposed extension of consultation is to ensure any decision on implementation of the additional licensing proposal is based on sufficient evidence and justification for an additional licensing scheme to be compliant with the relevant Housing Act 2004 legislation and guidance.

The proposal to extend consultation is based upon the following:

- Relatively low number of responses to initial evidence gathering;
- Continued calls from communities and residents' associations in the areas concerned for action to mitigate the impact of over-concentration and management issues relating to HMOs in their area, now mapped through joint work with Planning as part of their complementary options work on Article 4 direction;
- Concerns raised by landlord & lettings agents groups seeking clarity over proposed standards to be applied to HMOs licensed under any additional licensing scheme;
- Concerns raised by landlords & lettings agents around robustness of initial consultation;
- Updated guidance from Local Government Regulation - in particular in relation to consultation with businesses - there is no indication that any current responses are from businesses and there has been no formal consultation with business groups or representatives;
- Peer review with other local authorities on their approaches to consultation for such schemes;
- LGR guidance in relation to consultation use of questionnaires states "A survey involving a questionnaire can be started either during the evidence gathering stage or during the consultation stage. A survey started in the evidence collecting stage can be extended for use during the consultation stage to obtain a representative sample from all groups".

3.17 Proposed extended consultation

Proposed parameters for extended consultation stage are below:

- Publish evidence gathering results from initial consultation on the council website and be clear why we are extending consultation;
- Evidence gathering from initial consultation will now be extended but not double counted in the extended consultation stage or excluded from the final evidence base presented in support of any additional licensing decision.

In addition:

- At an appropriate point before the consultation period commences press release and adverts on the initiative would be issued;
- Briefing notes on what the proposed scheme means will be available on council website;
- Door to door consultation survey with resident and businesses in the 5 wards (1000 randomly selected homes and businesses), undertaken from within existing identified resources;
- Develop online consultation methods for residents and stakeholders at large;
- Engage with partners and other local authority services;
- Consult with: neighbourhood forums; resident group meetings; student unions; landlords' & lettings agent forums; business forums;
- Demonstrate that we have considered other strategies to address any problems;
- Present robust evidence of problems in the relevant areas;
- Refer to Planning Department consultation work on Article 4;
- All consultation feedback will be logged, recorded, analysed and collated.

Final collation and analysis of all consultation responses will be reviewed against stated aims of the additional licensing proposals and an outcome report with the results of the consultation and any proposals to implement a scheme will be considered by Housing Cabinet Member before a final decision is made.

Once any additional licensing scheme has been approved there are specific requirements relating to publicity and when the scheme may come in to force (not less than 3 months after the date of adoption). The authority must review the designation from time to time and may revoke it if considered appropriate.

3.18 Proposed timetable for consultation

Action	Time	Dates
1. Final Consultation <ul style="list-style-type: none"> · Update to Housing Cabinet Members Meeting · Questionnaire – consultation portal & door to door questionnaire of 1000 households in proposed wards · Analyse responses received already from stage 1 · Press releases/Public Notices · Adverts in newspapers and publications used by landlords and tenants · Social networking – twitter & facebook · Ensure that consultation has been thorough and includes: <ul style="list-style-type: none"> • Residents groups in wards including Local Action Teams, Registered Providers, voluntary sector organisations, youth organisations, Brighton Housing Trust Local Action Teams • Businesses in locality of proposed additional licensing and groups representative of business interests. • Landlords & lettings agents, accredited landlords, Landlord Organisations, Brighton University & Sussex University. • Police, fire & rescue, NHS, other Council departments e.g. Planning, Environmental Health, Temporary Accommodation, Housing Strategy • Ward Councillors, local MPs 	10 weeks	19 Jan – 31 Mar 2012
2. Evidence Analysis <ul style="list-style-type: none"> · Detailed description of proposed area · Current position regards management problems · Detailed explanation of how Additional Licensing will improve these problems · Analysis of stakeholder consultation · Equalities Impact Assessment 	4 weeks	7 Feb – 31 Mar 2012
3. Prepare Report for Housing Cabinet Members Meeting	4 weeks	From 22 Mar 2012
4. Housing Cabinet Member consideration. If additional licensing proceeds: -		19 Apr 2012
5. Publish and notify all consultees	4 weeks	20 Apr – 20 May 2012
6. Consider any representations made	4 weeks	May - June 2012
7. Implement (3 months after any approval)	12 weeks	July / August 2012
8. Monitor impact	Ongoing	

B. Alterations to Brighton & Hove City Councils Standards for Licensable Houses in Multiple Occupation

3.19 The Housing Act 2004 enables Local Housing Authorities to set local standards for licensable Houses in Multiple Occupation. Brighton & Hove City Council standards were approved by Housing Cabinet in 2006 and they incorporate the standards prescribed by national regulations. Officers have reviewed the standards and, in the light of experience over the past five years, they propose certain changes (where the council has discretion) to improve conditions for tenants and management of the houses. The draft revised standards are attached in appendix 1 and will be included in consultation proposals.

3.20 This report seeks cabinet approval to consult on the proposed changes to standards outlined in appendix 1.

3.21 Fees & charges

- HMO licence fee covers the cost of the administration, issuing of licences, inspections, enforcement and monitoring of properties.
- The Council's Corporate Fees & Charges Policy requires that all fees and charges are reviewed at least annually and should normally be increased by either the standard rate of inflation, statutory increases, or actual increases in the costs of providing the service as applicable. Non-statutory increases above the standard rate of inflation and/or changes to concessions or subsidies should be reported to and considered at the relevant Cabinet Member Meeting. Where appropriate, details of fees and charges changes for 2012/13 are therefore being presented to the relevant Cabinet Member Meetings prior to Budget Council.
- The Government's advice is that HMO licensing schemes should be self financing. There should be no element of profit and any shortfall would have to be subsidised through revenue budgets.
- The setting of the licence & renewal fees has been achieved with reference to the principles set out in guidance and recommendation on the justification, calculation and structuring of HMO Licence Fees produced on behalf of the East and West Sussex Chief Environmental Health Officers by an independent consultant in October 2005.
- A licence or renewal of licence is granted for a maximum period of five years.
- The licence fee payable at the point of initial licence or re-licensing is up front and generally for this 5 year term.

- Given the nature of mandatory HMO licensing the vast majority of fee income is received from landlords in year one of any 5 year scheme or subsequent renewal and covers the whole 5 year term.
- In relation to fees for our existing mandatory HMO licensing scheme, Housing Cabinet Member Meeting on 5 January 2011 agreed that the revised fees for initial HMO licence applications, be approved, as outlined in the 5 January HCMM report and that new fees be introduced to apply to applications to renew a licence that has expired.
- The fees are calculated on the basis of recovering the costs of the estimated officer time taken to process the applications. There have been a large number of renewals in 2011/12 and as previously, the income will continue to be aligned over the period of the licence (5years).
- Given the parameters outlined above the licensing fee framework for mandatory HMO licensing is not currently subject to annual review.
- Any future licence fee relating to any additional HMO licensing scheme approved by a future Housing Cabinet Member Meeting will be agreed and applied in the context of above parameters.

4. CONSULTATION

Consultation on the proposed declaration of an additional licensing scheme is required in law (Section 56 of the Housing Act 2004) and so as part of this all relevant stakeholders will be consulted as outlined in this report.

Consultation will also take place with relevant stakeholders on changes to the standards for licensable HMOs.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

The financial implications of any proposals to introduce licensing for smaller HMO's will be included in a future report.

In respect of mandatory HMO licenses, the rates agreed at the Housing CMM on 5th January were based on the recovery of the estimated costs of processing and monitoring the licences over the 5 year period. Given that the majority of the existing licenses have already been renewed during 2011/12 for a further 5 year period, is not proposed to increase the fees for mandatory HMO licenses for 2012/13. The income received will continue to be aligned over the period of the license.

Finance Officer Consulted:

Michelle Herrington

Date: 06/01/12

5.2 **Legal Implications:**

It is important that the extended consultation process is carried out properly, otherwise any decision taken based on its findings may be vulnerable to challenge by judicial review. The courts have said, "It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken."

Lawyer Consulted:

Name Liz Woodley

Date: 06/01/12

5.3 **Equalities Implications:**

A full equalities impact assessment will be undertaken as part of the process to look at the impact of the proposed changes.

5.4 **Sustainability Implications:**

Maintenance and improvement of existing housing stock is generally more sustainable than continued deterioration. Licensing of HMOs should improve standards for the residents in those homes and the liveability of residential areas more generally.

5.5 **Crime & Disorder Implications:**

5.5.1 **Additional Licensing- Stage 2 Consultation**

The proposed consultation will help to produce a better understanding of any problems in the area and the views of the communities who may be affected. This in turn could be helpful in addressing concerns about crime and disorder.

5.5.2 **Alterations to Brighton & Hove Standards for Licensable Houses in Multiple Occupation**

Generally speaking the proposals have no implications for crime and disorder but in some cases they may help reduce the likelihood of neighbourhood nuisance.

5.6 Risk and Opportunity Management Implications:

The risks associated with the proposals in this report will be managed in compliance with the Council's risk management strategy

5.7 Corporate / Citywide Implications:

- Corporately the proposed consultation will help the council to become better informed when deciding whether to introduce Additional Licensing
- Proposals to further consult on Additional Licensing should be considered alongside Planning consultation on possible Article 4 directions to control numbers of new HMOs.
- Residents in other parts of the City may consider that issues that have led to proposals for additional licensing in the 5 identified wards also exist in their area.
- Experience with mandatory licensing suggests that Additional licensing would have no significant adverse effect on property supply.

5.7.2 Alterations to Brighton & Hove Standards for Licensable Houses in Multiple Occupation

The proposals outlined in this report are related to strategies that support the overarching Citywide Housing Strategy 2009-2014: healthy homes, healthy lives, healthy city. The proposed alterations may improve standards in the houses concerned and address issues arising from over-concentration of HMOs in the wards identified.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 Additional Licensing consultation on proposals with landlords and residents & others in the proposed wards is required by law. Evaluation of evidence, consultation responses and any alternative options to Additional Licensing will be presented in a full report to a future Housing Cabinet.Member Meeting

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 These are addressed above and in the relevant appendices

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix 1 - Draft Standards for Licensable Houses in Multiple Occupation
2. Appendix 2 - Concentration Mapping of HMOs & Student Housing in the 5 wards (indicated in the paper)

Background Documents

1. Student Housing Strategy 2009-2014
[http://www.brighton-hove.gov.uk/downloads/bhcc/Brighton and Hove Student Housing Strategy Jan 2010.pdf](http://www.brighton-hove.gov.uk/downloads/bhcc/Brighton_and_Hove_Student_Housing_Strategy_Jan_2010.pdf)

