

BEDFORD BOROUGH COUNCIL – EXECUTIVE

Date of Meeting: 23 January 2013

REPORT BY: Portfolio Holder for Community & Regulatory Services, and the Assistant Director (Regulatory Services)

SUBJECT: Outcome of the Consultation for the Introduction of Additional Licensing Scheme for Houses in Multiple Occupation (HMOs)

1. EXECUTIVE SUMMARY

- 1.1 This report seeks approval to extend the principles of the mandatory licensing scheme currently operated by Bedford Borough Council, through the introduction of additional licensing as defined in the Housing Act 2004. The scheme which will cover the whole of the Borough will require landlords of HMOs to apply for a licence for the property to ensure it meets current national and local standards in relation to fire safety and management. This is a discretionary power which has been devolved from Central Government for local Councils to determine and is set out in section 56 of the Housing Act 2004.
- 1.2 This report provides evidence (Appendices A, B, C, D) to support the need for a scheme through a Borough wide consultation which took place between 1 October – 10 December 2012. It also examines some of the concerns which were raised and how they should be addressed. This includes a recommendation for the pricing structure, timescale for implementation, sanctioning and review of the scheme.
- 1.3 It is intended that this proposal will contribute to the Council's vision to 'work with its communities and partners to improve the local quality of life' and will also improve those HMOs in the area that are poorly managed. The target is to increase the broad level of compliance for management and fire safety of homes in this sector from 62 to 85%. This will improve living conditions for local tenants bringing an estimated 1,000 HMOs which are not currently licensed within the statutory scheme.

2. RECOMMENDATIONS

- 2.1 That Executive consider, and if satisfied,
- (i) Approve the designation of an additional licensing scheme for HMOs in the whole of the Council's area.

- (ii) **Agree the pricing structure for licence applications and administrative charges as identified in Appendix E.**
- (iii) **Agree to include s257 HMOs within the licensing scheme.**
- (iv) **Agree to the principle of the publication of an online register of landlords who are licensed by the Council.**
- (v) **Agree the timescale for implementation beginning in May 2013 and review in 2016 to evaluate its success with a view to wind down in 2018 as set out in Appendix F.**
- (vi) **Agree that the Head of Environmental Health and Trading Standards, in consultation with the relevant portfolio holder, be authorised to review the scheme, its implementation and resourcing and make amendments as necessary to ensure the principles of the scheme are achieved.**

3. REASONS FOR RECOMMENDATIONS

- 3.1 The overarching aim of the scheme of additional licensing is to extend the principles already in use through the mandatory licensing scheme to improve fire safety, repair and management standards in order that properties comply with the minimum legal standards required in the private rented market. The introduction of such a scheme will improve the level of broad compliance in the HMO housing sector from 62 to 85% regarding factors relating to the fire safety and management of tenants' homes.
- 3.2 The consultation showed that the majority of respondents supported the scheme with 63% agreeing with the introduction of an additional licensing scheme. The views of respondents varied between landlords, partners and tenants with the majority of tenants and residents supportive (93 %), with less than half of landlords supporting the idea (44%). Whilst this figure relating to landlords is not a majority, it still represents a significant number of landlords who do support this scheme. The National Landlords Association and the Residential Landlords Association, being representative of their members' views, gave detailed responses which were, in the main, in disagreement with the proposals. The Council's partners and other stakeholders, such as Bedfordshire and Luton Fire and Rescue Service, were wholeheartedly in favour of the scheme.

3.3 The balance of evidence published in the consultation document shows that conditions do need to be improved in a more structured and proactive way than is currently being undertaken. This along with the support from tenants and residents for the scheme, support the decision to proceed with the scheme as appropriate and necessary.

4. KEY IMPLICATIONS

Legal Issues

4.1 Discretionary licensing schemes such as that being proposed previously had to be approved by the Secretary of State for Communities and Local Government; however this power was devolved to Local Authorities in April 2010 to give Local Authorities more discretion to tackle housing conditions in a way that reflects the local conditions and in their area.

4.2 Local Authorities must gather evidence to demonstrate the need for an additional licensing scheme and consider that a 'significant proportion of the HMOs in their area are being managed sufficiently ineffectively' to give rise to problems for occupants 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 issue.

4.3 Local Authorities also have to:

- Determine whether or not they meet the legislative requirements to introduce a scheme.
- Consult those likely to be affected by the scheme for a minimum of 10 weeks.
- Respond in writing to consultees who raise substantive issues.
- If a designation is agreed, publish the notice of designation seven days after the designation is confirmed in municipal buildings, on the internet and in the local press.
- Send copies of the designation to respondents and those who represent their interests within 2 weeks of the designation being confirmed.
- Provide a minimum of 3 months between deciding to adopt the scheme and implementation.

4.4 Failure to meet statutory requirements may lead to a challenge which could be a judicial review. To avoid this, the Council have engaged with landlords at an early stage of the process and followed the prescribed process and national guidance.

Policy Issues

4.5 The Council's Corporate Plan sets out its corporate policies. The services in the Environment & Sustainable Communities Directorate contribute to a number of themes set out in the plan.

- 4.6 Currently, there is a mandatory licensing scheme in operation for the larger HMOs in the Borough which are 3 or more storeys with 5 or more occupants living as separate households which share common amenities. These proposals will bring an estimated 1000 HMOs which are not currently licensed within the statutory scheme.

Resource Implications

- 4.7 The proposed fees (Appendix E) have been set at a level that is reasonably expected will cover the costs of providing the service. They have been based on estimated officer time and associated costs involved in processing the applications, monitoring and administration including relevant overheads. It is worth noting that the costs of HMO licensing across other Local Authority areas varies significantly, for what are similar licensing schemes. The majority of these schemes offer a complicated fee structure that is invariably higher cost than that proposed within this report.
- 4.8 Policy option ESC24 agreed that income of £44,000 per annum would be achieved through the extension of the principles of the current mandatory HMO licensing scheme via the introduction of an additional scheme covering other types of HMO. Based on the outcome of the consultation and the proposals contained within this report, it is estimated that this fee income should be achieved and the scheme should be self financing, in line with national legislation and guidance. However it should be noted that it is anticipated that the majority of applications will be received in the first year of operation and it is therefore intended to resource the service flexibly in response to demand, with consideration given to how the savings would be proportioned each year over the 5 year period.

Risk Implications

- 4.9 There is a risk that landlords in Bedford could object to the scheme and initiate a judicial review. However, this is only if the Council has failed to have regard to the legislation and follow the prescribed process. Historically Bedford Borough Council, through its Environmental Health Service, has built up an excellent relationship with their landlords, have engaged with them early in the consultation process and have followed the proper process and guidance outlined below to mitigate this risk:
- The Housing Act 2004 s56 -60.
 - The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.
 - Department for Communities and Local Government: Approval steps for additional and selective licensing designations in England.
 - Local Authority Co-ordinators of Regulatory Services (LACORS) guidance: Additional and Selective Licensing under general consent: A guide for practitioners from LG regulation.

- 4.10 It is believed that more than a third of HMOs within Bedford Borough are estimated not to be broadly compliant, in terms of fire safety measures and overall management standards, and that there is an increased risk that if this policy does not go ahead that tenants will be living in accommodation which is not adequately protected from fire or properly managed. It is also worth noting that there is a potential for an increase in demand for this type of property in the future as a result of planned national welfare reforms. This could have a negative effect and increase the risk to householders in this sector of the market.

Environmental Implications

- 4.11 There are no direct environmental implications arising from the contents of this report.

Equalities Impact

- 4.12 In preparing this report, due consideration has been given to the Council's statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.
- 4.13 A relevance test for equality has been completed. The equality test determined that the activity has no relevance to Bedford Borough Council's statutory equality duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relation. An equality analysis is not needed.

5. DETAILS

- 5.1 Additional HMO licensing can be introduced where a significant proportion of the HMOs in an area are being managed ineffectively, regarding standards of safety and living conditions, by landlords. The total number of HMOs within the Borough is approximately 1000 to 1200.
- 5.2 The Council currently operates a mandatory HMO licensing scheme (where properties are 3 storeys or more, have 5 or more occupants, and some shared amenities) as per the Housing Act 2004. This has been successful in protecting the public and driving up property standards in these particular premises, where often vulnerable members of the public live. Currently there are 70 licensed HMO premises within the Borough.
- 5.3 There are approximately 1000 HMOs that do not presently fall within the mandatory licensing scheme. The Council believes that property standards and safety would be improved if the licensing was extended to a greater proportion of other types of HMOs. It is therefore anticipated that this scheme would account for approximately 1000 HMOs of the total number within the Borough.

- 5.4 Owners of self contained flats that are converted from older buildings (referred to as 's257' HMOs) should be aware that it is proposed that these older conversions, where management may be lacking, with no proper fire warning systems to protect occupiers, may be affected by the proposals. This group of properties is a significant part of the enforcement work carried out by the Council and such properties with no fire alarm systems may be high risk.
- 5.5 Other property types that may be included are smaller two storey HMOs, including student houses, HMOs that are located over shops and flats that are in multiple occupation or shared by a group. The key element is the sharing of facilities or the fact that the flats are converted prior to 1991 and have at least 1/3rd short term tenancies.

The HMO Licensing Process

- 5.6 Licensing of HMOs involves owners completing an application to the Council to show the HMO is managed properly by a fit and proper person, that it has satisfactory fire safety arrangements, that it has proof of gas safety, electrical safety, deposit protection and energy efficiency – all matters which good landlords may already undertake. The principles adopted under the mandatory licensing regime applies to all landlords of certain property types, therefore these same principles will also be applied to all landlords of HMOs if an additional licensing scheme is designated.
- 5.7 Management companies can also be considered as the 'fit and proper person' in terms of a licence application; therefore where a management company exists it is necessary to consider its responsibilities in terms of the overall management of the property, with specific emphasis on fire safety/means of escape and confidence in the management of the property.
- 5.8 The aim of the scheme will be to raise sector standards for landlords who want to do the right thing, and enforce against those landlords who persistently fail to comply and put tenant safety at risk. This scheme will ensure that all HMOs will have to be licensed, where a non licensed HMO is found (by surveying or complaints), the landlord/owner/management company will be subject to enforcement action. The licensing regime will enable the Council to proactively deal with all HMOs in a scheduled way in order to protect vulnerable residents.
- 5.9 In a similar way to the current Mandatory Licensing scheme one of the requirements of an Additional HMO Licensing scheme is to issue a licence to all qualifying landlords/owners/management companies. By granting such a licence the Council is agreeing that a property meets the definition of a HMO and that it is suitable for occupation, subject to it meeting certain conditions and prescribed standards taken from national legislation and guidance.

- 5.10 HMOs will be inspected during the licence period and checked to make sure the property is compliant with the national and local minimum standards for houses in multiple occupation. The focus will be on fire safety, gas and electrical safety, good management and practices, good quality shared facilities and rooms that are sufficiently spacious to avoid overcrowding.
- 5.11 The power to charge for issuing HMO licences is defined under the Housing Act 2004, which allows local housing authorities to cover their costs of licensing; the intention of allowing these measures to be used allows these schemes to be self-financing. Without the licence and associated fee, the proposed scheme would not give the additional powers to tackle the problems associated with this sector of housing within the private rented market. The Council, as a local housing authority, would have a greater level of enforcing power to ensure the safety of occupiers was not put at risk, with the scheme also promoting improved standards of safety required amongst the local residents, landlords, owners and management companies concerning HMOs.

Current Profile of Mandatory Licensed HMOs

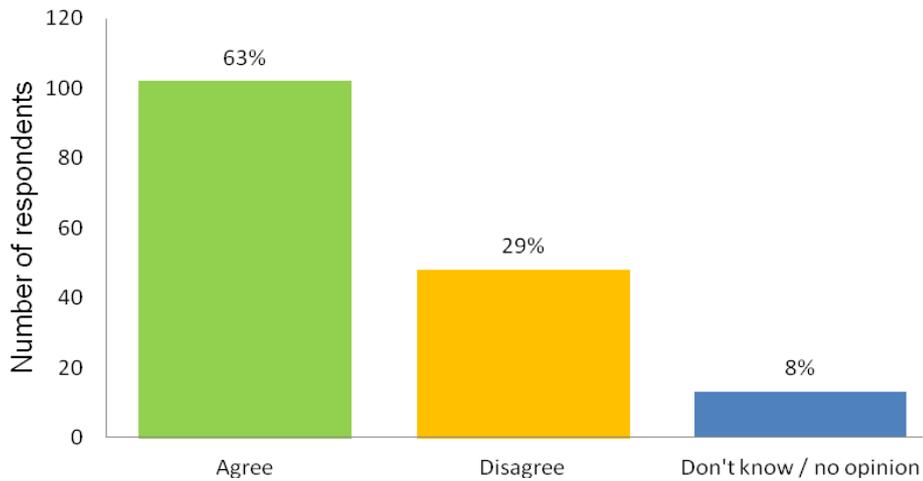
- 5.12 There are currently 70 mandatory licensed HMOs within the Borough, these are the higher risk properties based on the number of storeys, number of occupants and sharing of amenities such as kitchens and bathrooms. Of the 70 currently licensed under the mandatory scheme, 97% of these have been determined to be broadly compliant through inspection and licensing.
- 5.13 The term 'broad compliance' has been developed locally as part of a risk assessment model to determine a property's physical compliance and overall management, by the owner/management company, having regard to housing and fire safety legislation and guidance.
- 5.14 However when assessing the broad compliance of HMOs currently licensed against those that are not, of the approximate 1,000 HMOs within Bedford, only 64% of these have been determined to be broadly compliant. Therefore the overall aim of the scheme will be to improve the broad compliance of the majority of the HMO stock within the Borough to achieve at the very least the minimum standards of safety and management.
- 5.15 In April 2011 the Council was forced to serve emergency prohibition orders on three properties in Prebend Street that were operating as a two storey HMOs. Serious concerns were raised regarding the electricity supply to the properties, the potential fire and safety risks this posed and the imminent risk presented to the occupiers of the properties. In this case the tenants secured suitable alternative accommodation, with the landlords continuing to work to improve the safety standards at the property in line with applicable legislation and guidance.

Public Consultation

- 5.16 A wide ranging consultation exercise commenced on the 1st October and continued for 10 weeks until the 10th December 2012. The consultation was publicised in a number of ways using a press release and adverts in two local newspapers as well as on the Council's own website. Responses were encouraged through a bespoke questionnaire that was made widely available in hard copy through local libraries and Council offices and available online. A number of street surveys were also conducted in the high density HMO hotspots within the town with a copy of the questionnaire distributed.
- 5.17 The same information was also given to landlords, letting agents and managing agents, accredited landlords, the National Landlords Association (NLA), Residential Landlords Association (RLA), local solicitors and the University of Bedfordshire. Information was presented on the 20 and 27 November at the National Landlords Association meeting in Bedford and at the Bedford Corn Exchange where approximately 70 landlords attended in total. Mail shots were sent to over 300 known local landlords. Information packs were provided to approximately 30 local community groups and partners of Bedford Borough Council. 5,000 flyers were distributed with council tax bills, as well as 20 posters placed in bus shelters. A survey of 50 residents and tenants was also undertaken at the customer contact centre. Information was provided to Bedford's partners including Bedfordshire Pilgrims Housing Association, Bedfordshire Police, the Bedfordshire and Luton Fire and Rescue Authority, Shelter, neighbouring local authorities and NHS Bedfordshire.
- 5.18 The main purpose of the questionnaire was to seek people's views on the proposal and local need for additional licensing and the scope of the proposed scheme, in order to help inform Council decision making (the full results of the consultation exercise are outlined in Appendices A, B, C and D).
- 5.19 The results of the consultation were wide and varied, however the message received is that the principle of the scheme is sound and based on risks associated with this type of property. The key findings have been detailed below, with the complete responses in the appendices following this report:
- 5.20 Overall, 63% of all respondents agree with the proposals to introduce an additional licensing scheme (Fig. 1).

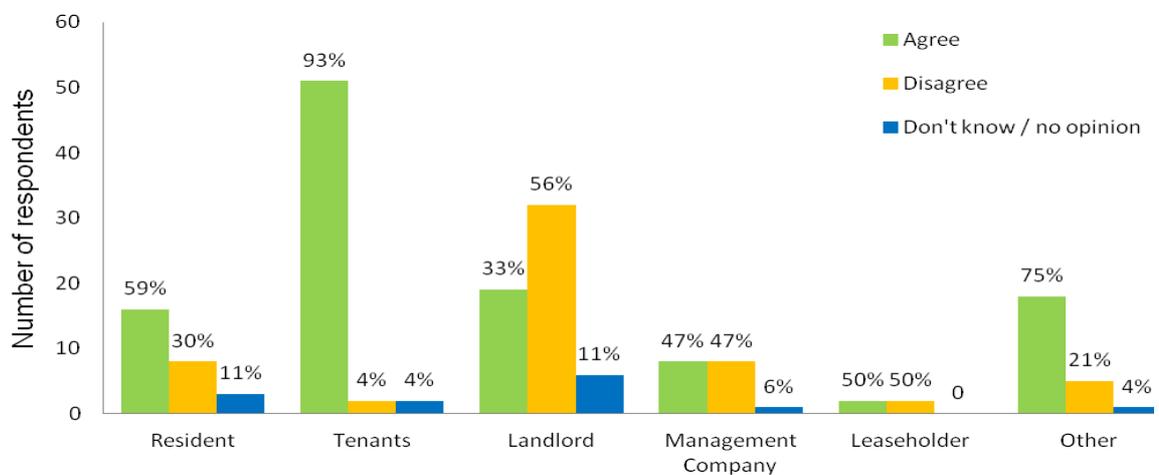
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Figure 1



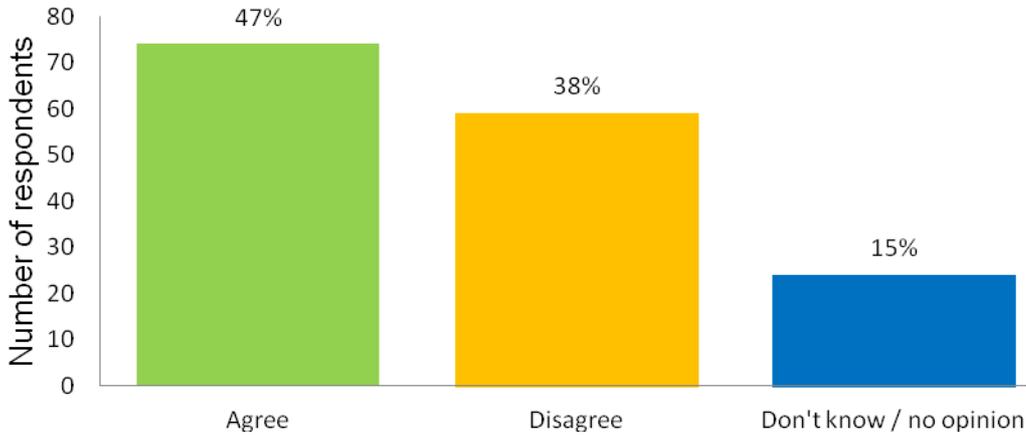
5.21 There was a split between the views of landlords and tenants with 56% of landlords / managing agents disagreeing with the scheme and 93% of tenants agreeing to it. (Fig.2).

Figure 2



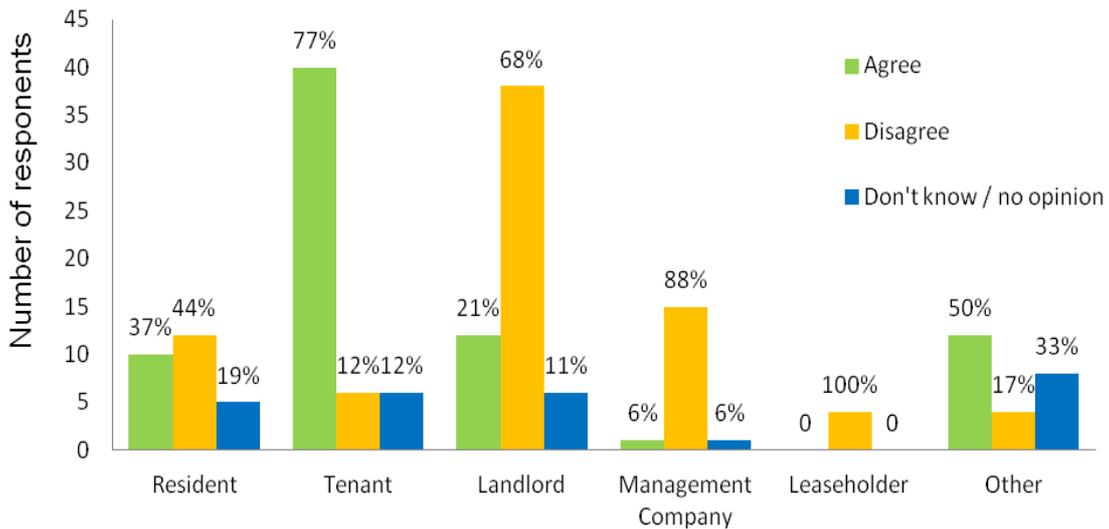
5.22 47% of respondents agreed with the proposed fee structure as opposed to 38% who disagreed (Fig. 3).

Figure 3



5.23 The majority of landlords disagreed with the fee structure (68%) (Fig 4).

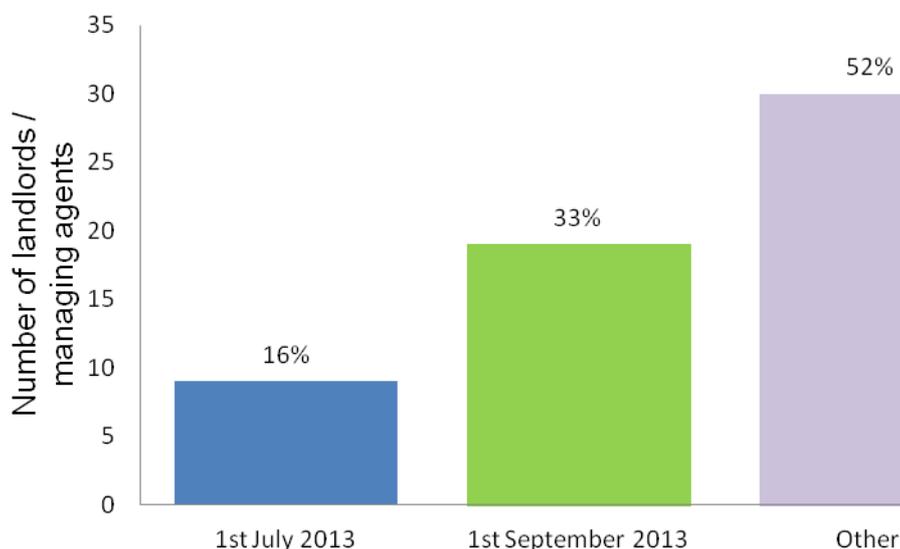
Figure 4.



5.24 Landlords and managing agents were also asked about what date should signal the application of additional fees for late applications or non compliance. The results are illustrated in Figure 5 below which shows that the majority (52%) do not agree with the suggested dates of the 1st July and 1st September for signalling an increase in administration charge. In the consultation a number of alternative options were suggested. The alternative suggestions of landlords mostly focused on an option where

no fee should be charged at all. However taking the proposed fee structure into account (Appendix E) landlords applying early have the potential to pay a reduced fee of £285 for the five year period of the licence; this equates to £57 per annum or £1.10 per week.

Figure 5.



- 5.25 Landlords also made a number of positive suggestions to improve the scheme including publishing an on line register of landlords who are licensed and establishing a landlords forum to share ideas and provide support to one another.

Outline of the proposals and consultation for Additional Licensing

- 5.26 The key high level proposals for the additional licensing scheme which the Council consulted upon during October to December 2012 included:

- A Borough wide designation with defined licence conditions based on existing council standards.
- A fee structure of £400 per HMO property for 5 years with discounts for early bird, on line applications and for members of a professional landlords association. Additional charges for late and incomplete applications included £50 per month, plus extra charges for incomplete applications and for landlords discovered operating an HMO without a licence.
- A scheme to incorporate all HMOs defined under the Housing Act 2004 including s257 HMOs (older flat conversions).
- A timescale for implementation was suggested to start in April 2013 with a review of the scheme taking place after three years (in 2016) and a wind down of the scheme, assuming it has met its objectives, planned in 2018.

Other options identified during the consultation

5.27 During the consultation a variety of comments were received from those stakeholders responding to the consultation questionnaire. All comments have been summarised and provided in the appendices which follow this report, however the substantive comments, issues and options have been included below:

- a) A voluntary accreditation scheme as an alternative to additional licensing.
- b) Greater enforcement and use of existing powers.
- c) A designation which relates only to the HMOs situated in the inner urban areas of the borough.
- d) A fee structure which is less complicated; or no fees to be applied at all.
- e) The exclusion of s257 HMOs from the scheme.
- f) An on-line register of licensed landlords.

5.28 Taking the above comments into account, a summary of the advantages and disadvantages of each of the suggested alternative options are identified in the table below:

	Option	Advantages	Disadvantages
a)	A voluntary accreditation scheme	Perceived as a less bureaucratic alternative by landlords who may be more supportive of voluntary accreditation.	Only those complying landlords would take part and there would be no sanctions against non complying landlords.
b)	Greater enforcement	The cost of administering a licensing scheme would be saved.	Enforcement tends to be complaint driven and resource intensive for the Council compared to a more pro-active whole market approach. It doesn't necessarily target the worst HMOs. May lead to an increase in Homelessness due to Prohibition Orders – one of the current enforcement options.
c)	An inner urban designation	Focuses on the problem areas and is easier to administer.	Sets up inconsistency and different standards for landlords across the Borough. Excludes potential bad properties and bad landlords based on area not risk.
d)	Reduced fee structure or no fees	Landlords would be supportive of this and would be more willing to take part in the scheme.	The income generated will not fund for the administration of the scheme. Council tax payers would, therefore, be subsidising the scheme and this may be seen as unfair.

e)	Exclude s257 HMOs	Less resources required to administer the scheme for the Council.	Sets up inconsistency across the Borough and means that older self contained flats with poor management and fire safety standards are not dealt with. This category represents a significant number of the complaints received each year about poor conditions.
f)	Publish an on-line register for licensed landlords.	Enables the good landlords to promote themselves with tenants in the market and will help drive up standards.	Needs to be administered and kept up to date so this has resource implications. Too much detail could be seen as intrusive by landlords or subject them to unwanted attention from junk mail or spam. Identifying HMOs by address could have security implications.

5.29 On balance and taking account of the advantages and disadvantages of each it is recommended that the Executive, if satisfied:

- Approve an additional licensing scheme to cover the whole of the Borough as it will be more cost effective than the introduction of an accreditation scheme for landlords. It will also prevent inconsistent standards being applied to landlords and properties across the Borough.
- Continue to enforce against the rogues, but introduce an additional licensing scheme alongside to provide impetus to a whole market approach to improving standards and reducing the potential for additional homelessness cases.
- Designate the whole of the borough rather than just the inner urban areas to avoid creating a post code lottery or inconsistent approach for different landlords within the Borough.
- In response to landlords concerns, simplify and improve the fee structure with increased charges for those who do not apply on time as outlined in Appendix E.
- Include s257 HMOs (older self contained flats) within the scheme, which will require more resources to administer, but will also improve the fire safety and management of an additional 650 properties within the Borough.
- In response to landlords suggestions consider publishing an on-line register for licensed landlords to drive up standards and promote complying landlords within the market.

6. **SUMMARY OF CONSULTATION AND OUTCOME**

6.1 The following Council units or Officers and/or other organisations have been consulted in preparing this report:

Management Group
Environment & Sustainable Communities Senior Management Team
Environment & Sustainable Communities Overview & Scrutiny Committee
Housing Options
Supporting People
Housing Strategy

All relevant comments received have been incorporated into the report/policy as necessary.

7. **WARD COUNCILLOR VIEWS**

7.1 Not relevant.

<i>Report Contact Officer:</i>	John Molyneux Head of Environmental Health & Trading Standards John.molyneux@bedford.gov.uk
<i>File Reference:</i>	EHTS/Add HMO Licensing/2013-01-02
<i>Previous Relevant Minutes(s):</i>	<u>14/09/2011 – Executive</u> , Item 6 Modernisation Programme Policy Options (ESC24), Minute 29
<i>Background Papers:</i>	None
<i>Appendices:</i>	<u>Appendix A</u> – Full results of the public consultation <u>Appendix B</u> – Comments from tenants, residents and leaseholders <u>Appendix C</u> – Substantive views of landlords and managing agents and the Councils response. <u>Appendix D</u> – Focus on Q 16, 17,18 <u>Appendix E</u> – Pricing structure <u>Appendix F</u> – Timescale for implementation and review <u>Appendix G</u> – Substantive responses from the Landlords representative bodies

Appendix A

Consultation Outcome and Findings

A wide ranging consultation exercise commenced on the 1st October and continued for 10 weeks until the 10th December 2012. The consultation was publicised in a number of ways using a press release and adverts in two local newspapers as well as on the Council's own website. Responses were encouraged through a bespoke questionnaire that was made widely available in hard copy through local libraries and Council offices and available online. A number of street surveys were also conducted in the high density HMO hotspots within the town with a copy of the questionnaire.

The same information was also given to landlords letting agents and managing agents, accredited landlords, the National Landlords Association (NLA), Residential Landlords Association (RLA), local solicitors and the University of Bedfordshire. Information was also presented on the 20th and 27th November at the National Landlords Association meeting in Bedford and at the Bedford Corn Exchange where approximately 70 landlords attended in total. Mail shots were also sent to over 300 known local landlords.

Information packs were also provided to approximately 30 local community groups and partners of Bedford Borough Council including Bedford YMCA local churches and faith groups, age UK, Yarlswood Befrienders, the Women's forum and Islamic Cultural Centre as well as the Citizens Advice Bureaux. 5000 flyers were distributed with council tax bills, as well as 20 posters placed in bus shelters. A survey of 50 residents and tenants was also undertaken at the customer contact centre.

A similar package of information was also provided to Bedford Pilgrims Housing Association, Bedfordshire Police, Bedfordshire and Luton Fire and Rescue Service, Shelter, neighbouring local authorities and the NHS Bedfordshire.

The main purpose of the questionnaire was to seek people's views on the need for additional licensing and the scope of the proposed scheme, in order to help inform Council decision making.

Summary of the Consultation Responses

There were 160 questionnaire responses as well as two comprehensive written letters from landlords representative bodies bringing the total to 162. These have been copied in Appendix G. There were also two late entries which were not analysed but are also copied in this appendix. A summary of the key highlights of the results are below:-

- 34% who responded were landlords or managing agents, 35% tenants 17% Residents 2% leaseholders and 16% other (Fig. 1).

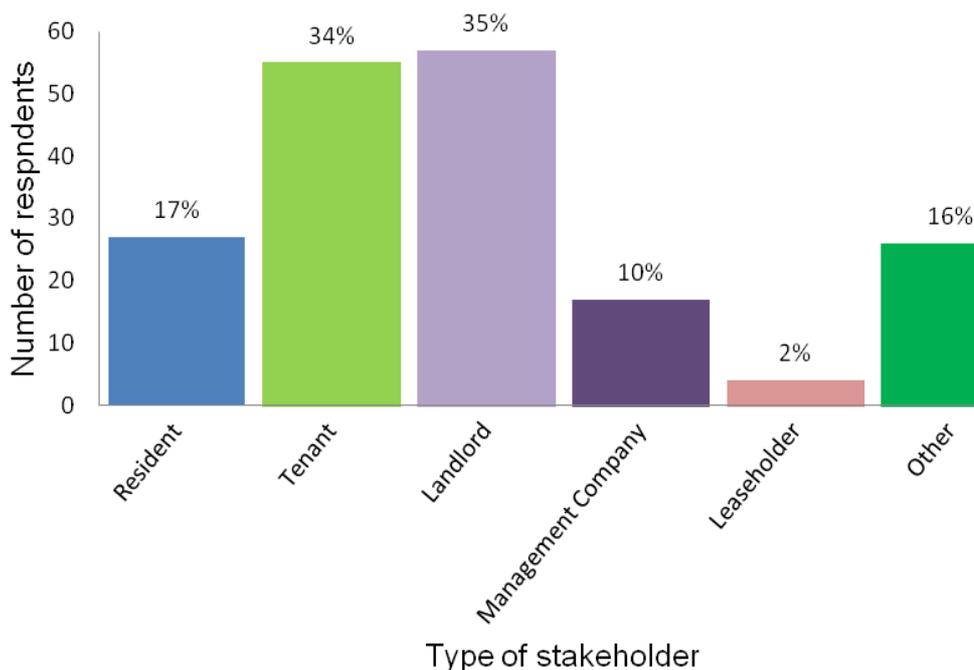
- 85% agree in principle with the Councils aims to improve the safety and management of HMOs within the Borough (Fig. 2).
- Overall, 63% of all respondents agree with the proposals to introduce an additional licensing scheme (Fig. 3). There was a split between the views of landlords and tenants with 44% of landlords / managing agents agreeing and 93% of tenants agreeing to the scheme (Fig. 4).
- Overall only 47% agreed with the proposed fee structure (Fig. 5) with 77% of tenants agreeing but only 32% of landlords agreeing (Fig. 6).
- 60% felt that the introduction of a scheme would improve housing conditions as a result (Fig. 7). 87% of tenants agreed with this whilst only 28% of landlords /managing agents did (Fig. 8).
- The majority of landlords /managing agents did not agree with the two start dates suggested for signalling penalties for late applications with 52% suggesting other alternatives (Fig.14).
- 66% landlords / managing agents suggested alternative fees for landlords who had not applied (Fig.15).
- The majority of landlords /managing agents (59%) also felt that older flat conversions (s257 HMOs) should be included within the scheme (Fig.16).

A more detailed analysis of the results is outlined below in four parts; Part 1 relating to personal details, Part 2 general questions, Part 3 specific questions for tenants, Part 4 specific questions for landlords.

Part 1 Results: Personal details

Q1. Numbers of respondents to the survey by stakeholder group

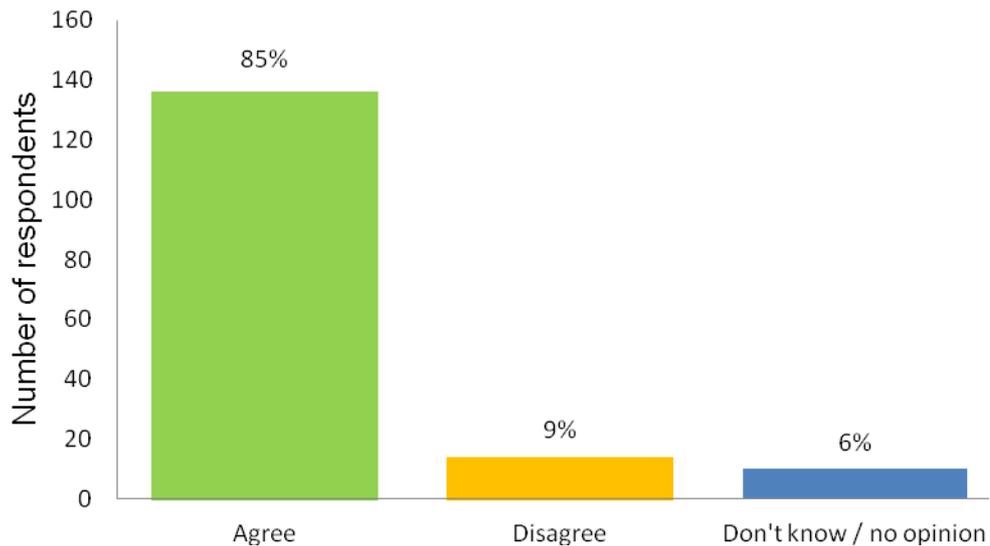
Figure 1.



Part 2 Results: General questions

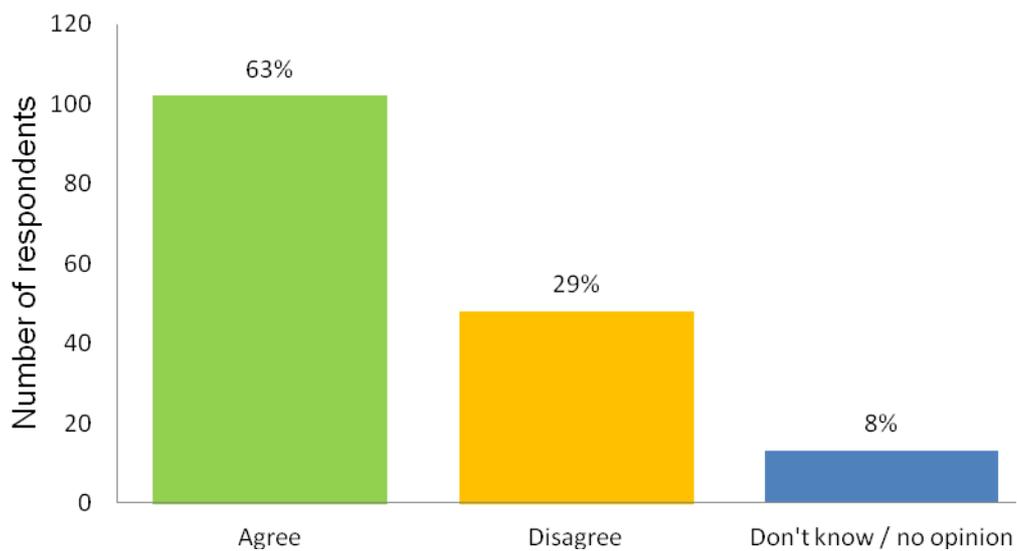
Q2. Respondents who agree / disagree with the Councils aims to improve safety standards and management of HMOs in the Borough.

Figure 2.



Q3. Respondents who agree / disagree with the Councils Proposals to introduce an additional HMO licensing scheme.

Figure 3.



A small selection of comments included:

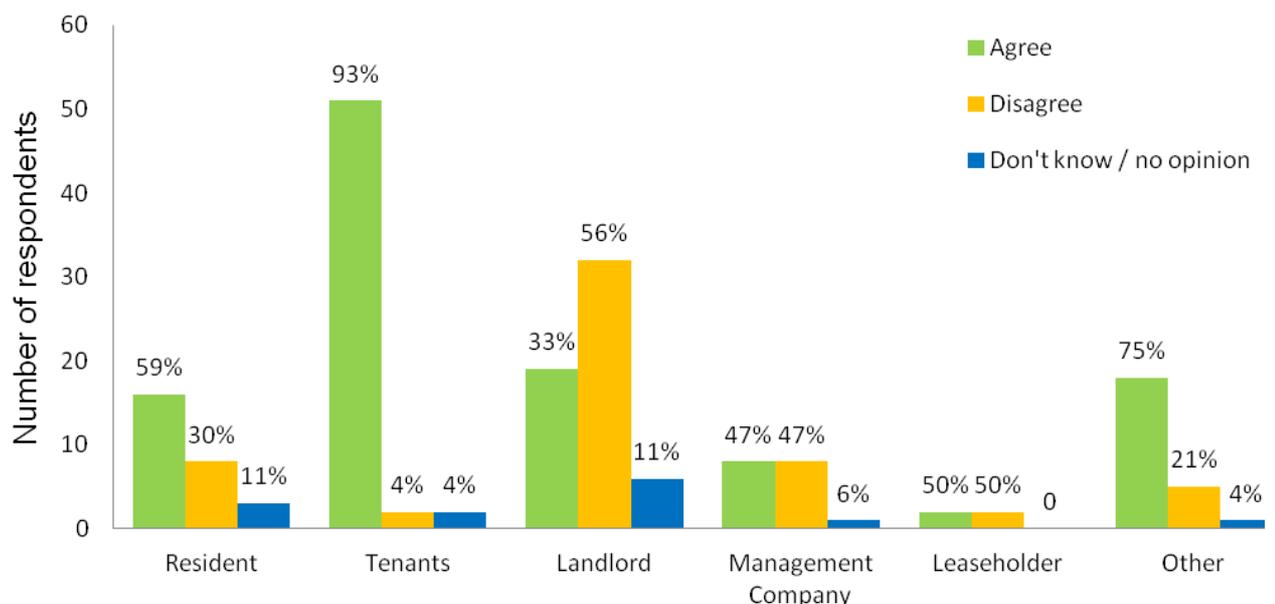
"The scheme is a good idea so that landlords can be checked and can maintain their property properly" (Tenant).

“As the landlord of an HMO which has been required to be licensed from the outset, I wholeheartedly applaud the idea of extending the scheme to other rented properties in the area. It is hard enough for a responsible landlord to find good tenants without having to compete on price against the cowboys. The downside for tenants will be, I suspect, that they will inevitably have to pay higher rents in exchange for better housing” (Landlord).

“We commend your efforts and believe this will represent a significant step forward in safety generally in the rented sector. In particular we welcome the effect this should have on fire safety and the driving down of serious injuries and fatalities due to fire” (Other partner).

Respondents who agree / disagree with the introduction of an additional licensing scheme broken down by stakeholder group.

Figure 4.



Comments included:

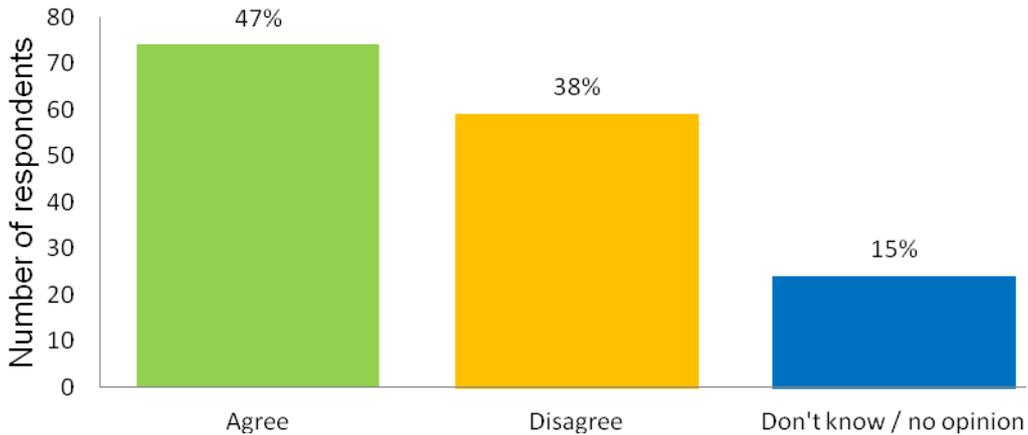
“As a landlord my biggest concern is the time given to carry out any necessary works and the possibility of having to re-house the tenant if the work is major. Also the cost of the work if it should be deemed to be major works” (Landlord).

Unfortunately property owners are seen as an easy target for making money. With the Councils short fall in budget it would seem clear this is just another tax on an already strained sector. If you proceed however the long term effects in stock will be dramatic (Management Company).

“This is a worthwhile project that will eventually raise standards, but will take considerable time and patience to achieve, remember local landlords assist with providing housing which otherwise would not be available and upto now has been very useful” (Resident).

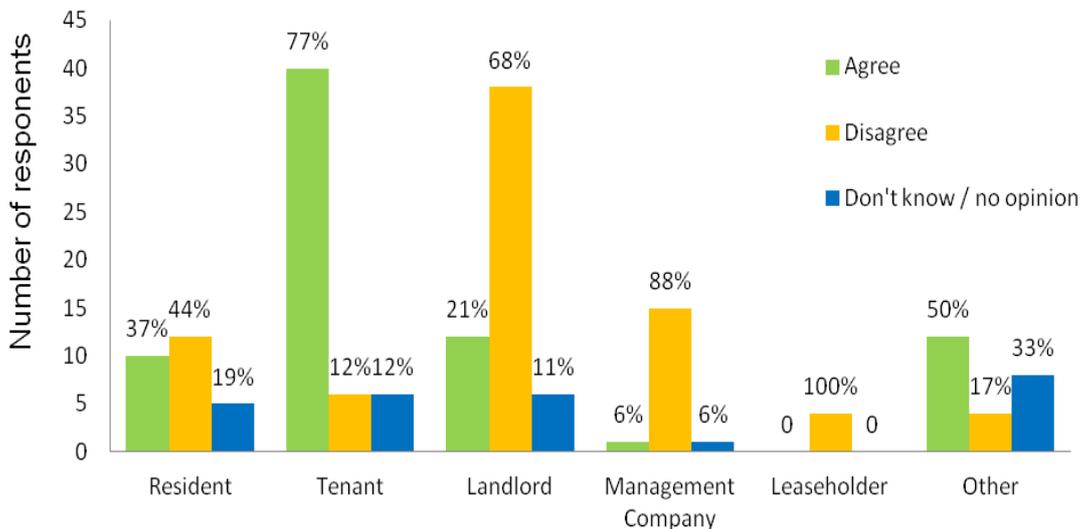
Q4. Respondents who agree / disagree with the proposed fee structure.

Figure 5.



Respondents who agree / disagree with the proposed free structure broken down by stakeholder group.

Figure 6.



Comments included:

“The basic idea is good but private landlords need to be helped with either a lower fee or no fee at all and support for repairs. For example, paying a small amount per month (like with British Gas) to help with repairs etc so that landlords are more

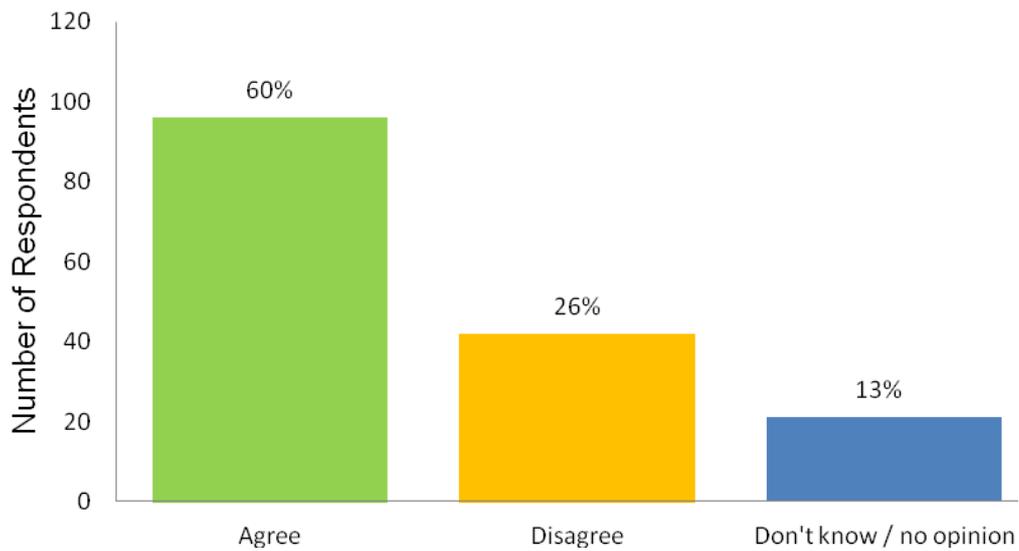
willing. There is concern that charging a license fee will increase homelessness and landlords will pull out” (Tenant).

“Stop introducing new taxing methods” (Landlord).

“The scheme should frighten the rogues away and the licence fee needs to be more at £400 per year per property. The standard might increase slightly. I think its a brilliant idea to stop the cowboys jumping on the band wagon and making more money off of people who are unfortunate or down on their luck” (Resident).

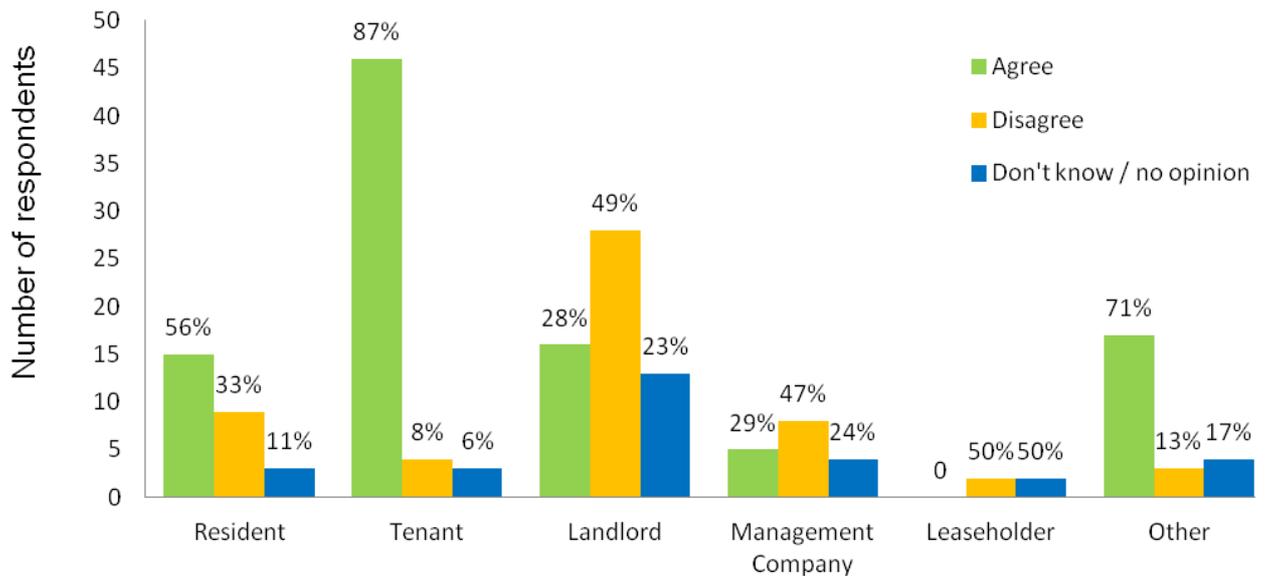
Q5. Respondents who agree / disagree that rented housing conditions will improve as a result of additional licensing.

Figure 7.



Respondents who agree /disagree that rented housing conditions will improve broken down by stakeholder group.

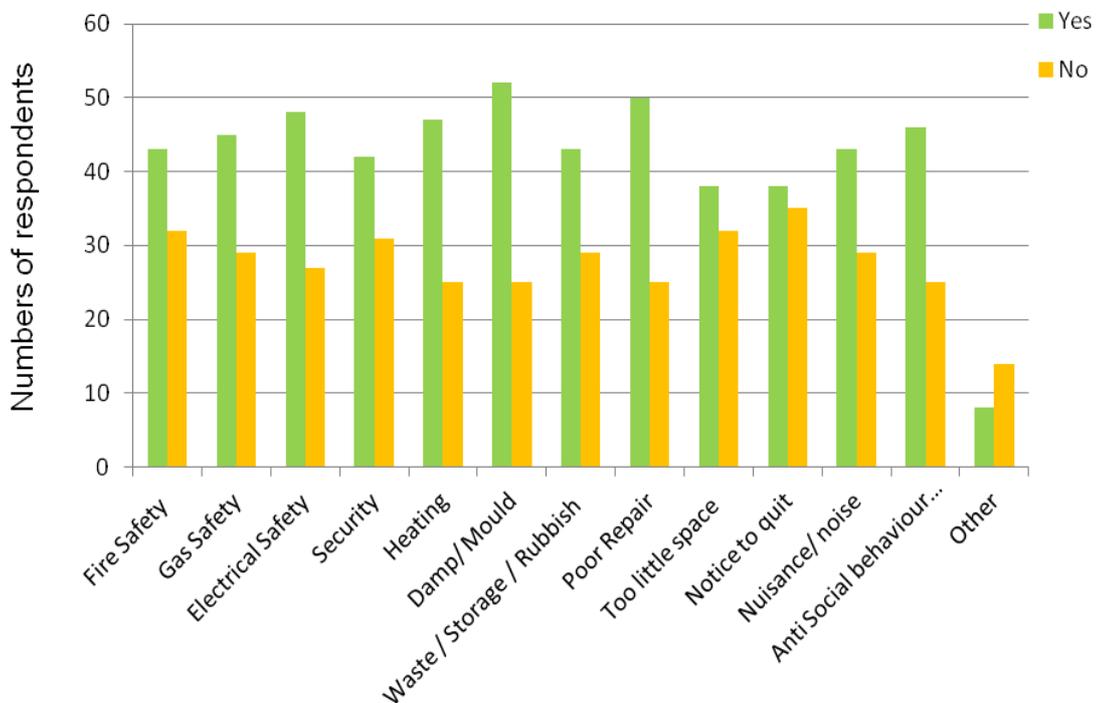
Figure 8.



Part 3 Results: Questions for tenants

Q6. Tenants, leaseholders and residents who reported that they had concerns about issues within their home or housing generally.

Figure 9.

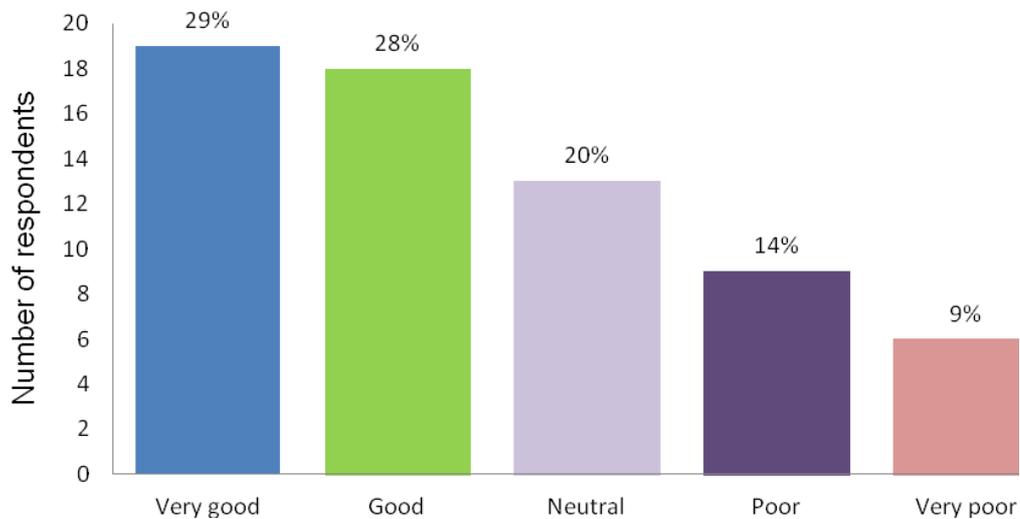


It can be seen that the biggest concern of tenants and residents are damp and mould and poor repair with anti-social behaviour and electrical safety also being important. Other concerns which tenants mentioned included poor insulation of homes, lack of disabled facilities, uneven flooring resulting in

slips and trips and the need for designated smoking areas outside of their property. One resident felt that planning permission should be sought before houses could be converted to HMOs because of the effect of the value on their home and increased worry about antisocial behaviour and security. On the other hand, landlords were concerned that the Borough Council would require them to spend large sums of money on building works which they did not see as justified.

Q7. Tenants, leaseholders or residents concerned about the way rented houses are managed by landlords.

Figure 10.



Generally tenants and residents were very positive about the way rented houses were managed by landlords. However, there were still 43% who were either neutral or had concerns about the sector with 9% suggesting that there is a very poor element within the market locally.

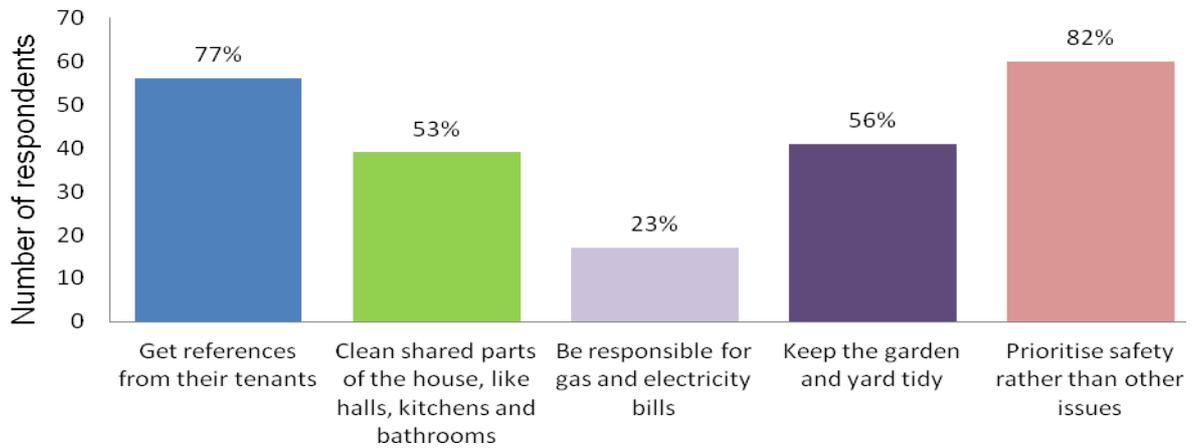
Comments included:

“My experience of landlords over the last 15 years has shown me that all tenants need to know their rights. Otherwise certain landlords will bully and harass them into accepting below standard conditions” (Tenant).

“We want less government interference in our lives - not more” (Tenant).

Q8. Landlords responsibilities: what residents, tenants and leaseholders think.

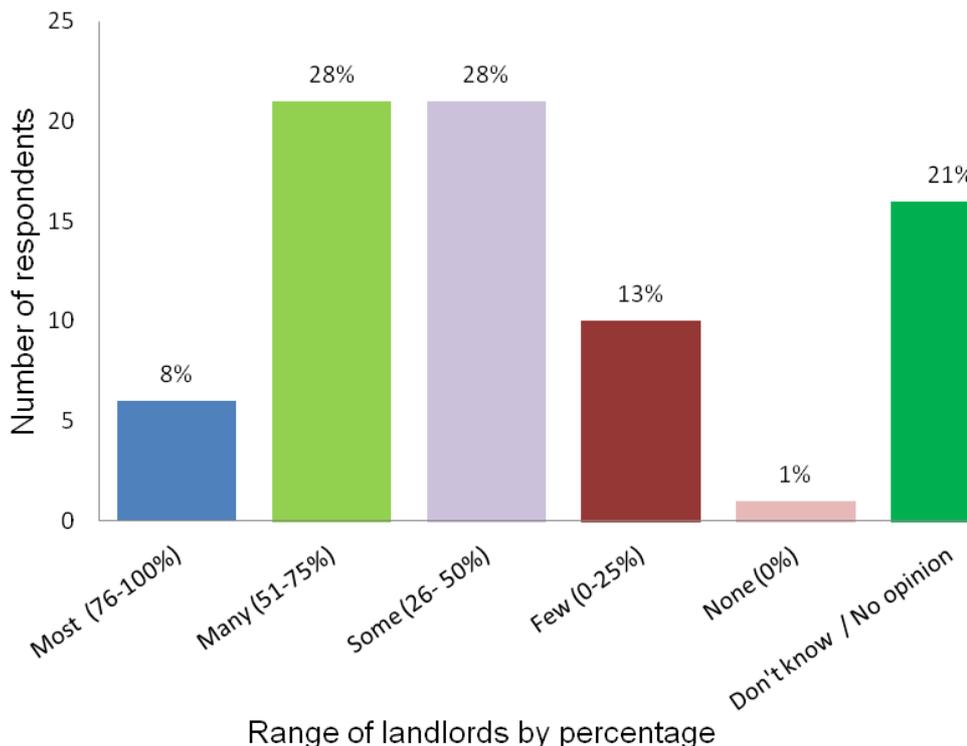
Figure 11.



A high proportion of tenants and residents felt that landlords should be responsible for obtaining references from their tenants and that they should prioritise safety above all other issues.

Q9. Residents, tenants and leaseholders views about the percentage of landlords in the local area who maintain standards.

Figure 12.



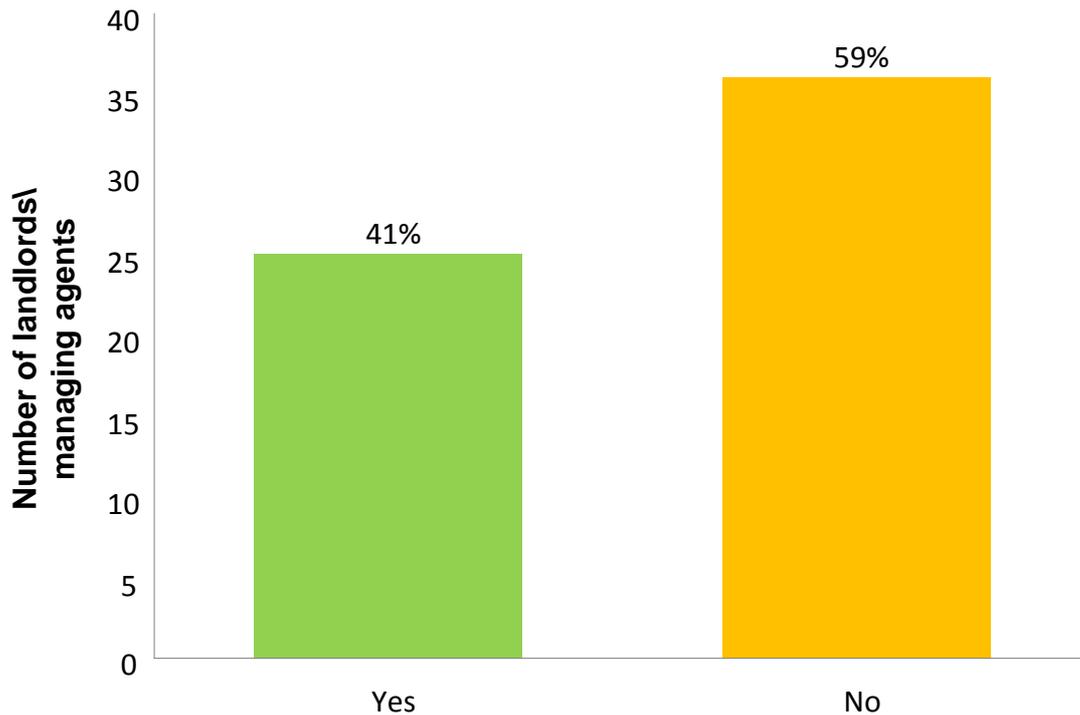
Although a number of tenants and residents 36% felt that the majority of landlords locally were of a good standard 42% thought that there was room for improvement. We could anticipate that this may relate to the Councils

estimate that over a third of HMOs are not broadly compliant with respect to fire safety and management.

Part 4 Results: Questions for landlords

Q10. Landlords and managing/letting agents who think that additional licensing will improve substandard HMOs and their management.

Figure 13.



Many landlords did not agree that this scheme would improve standards in HMOs and made additional comments which are reported in Appendix C

Q11. When asked what other ways could the Council help landlords there were a diverse range of responses which are also reported in Appendix C: A selection of interesting replies is below:

“Support seminars for landlords like one recently held”

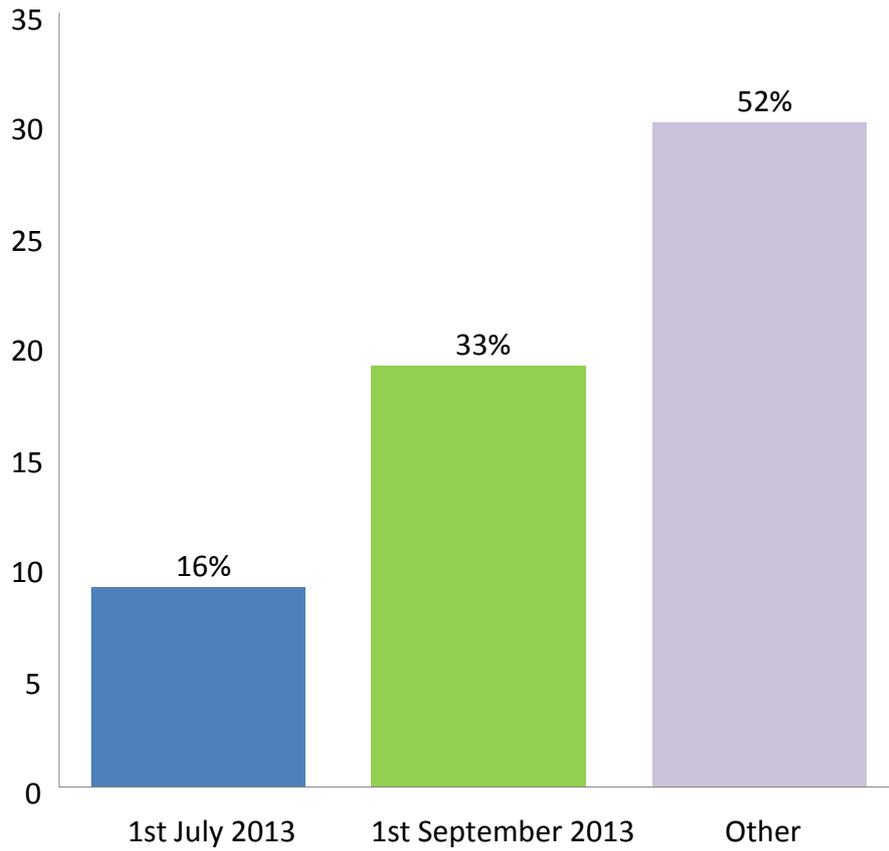
“Rewards and possibly awards for good practise.” Landlord of the Year” perhaps?

“Landlord accreditation schemes Landlord forums Incentives - if accredited - reduction in license fee”

“Good access to information on the web Landlord forums Regular inspections using partnerships to facilitate this Information sent by a variety of sources to remind Landlords of their obligations Information to tenants to remind them of their obligations and the standards they are entitled to”.

Q12. The date landlords, managing / letting agents think should signal the start of penalties for late applications.

Figure 14.



The majority of landlords and managing agents did not favour the introduction of penalties.

13. The maximum fee landlords, managing / letting agents think should be charged for those who have not applied for a licence.

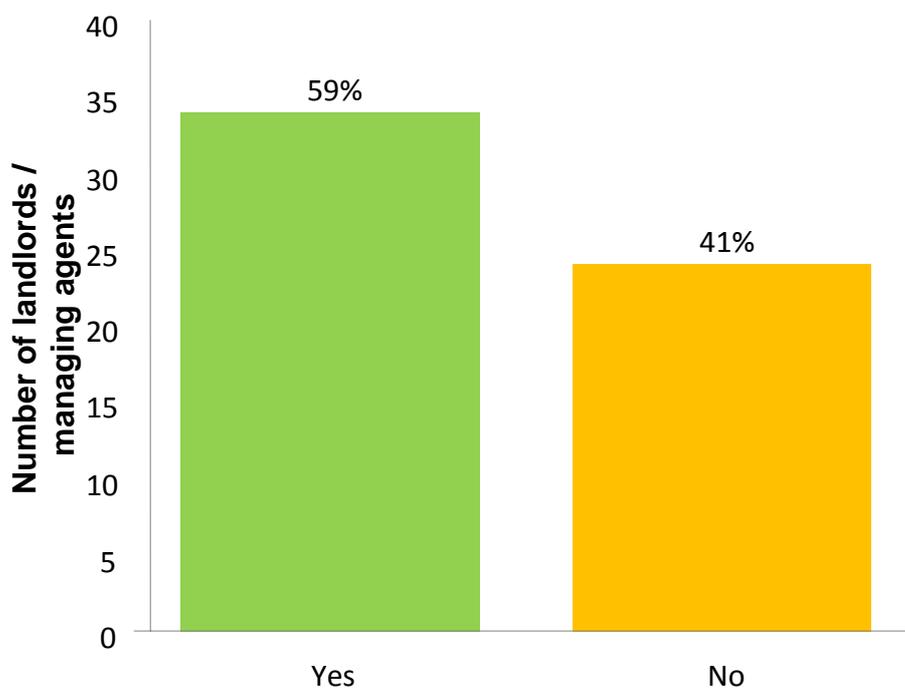
Figure 15.



The majority of landlords disagreed with applying fees and penalties for those who hadn't applied for a licence.

Q14. Landlords, managing / letting agents who agree that older flat conversions (s257 HMOs) should be included within the licensing scheme.

Figure 16.

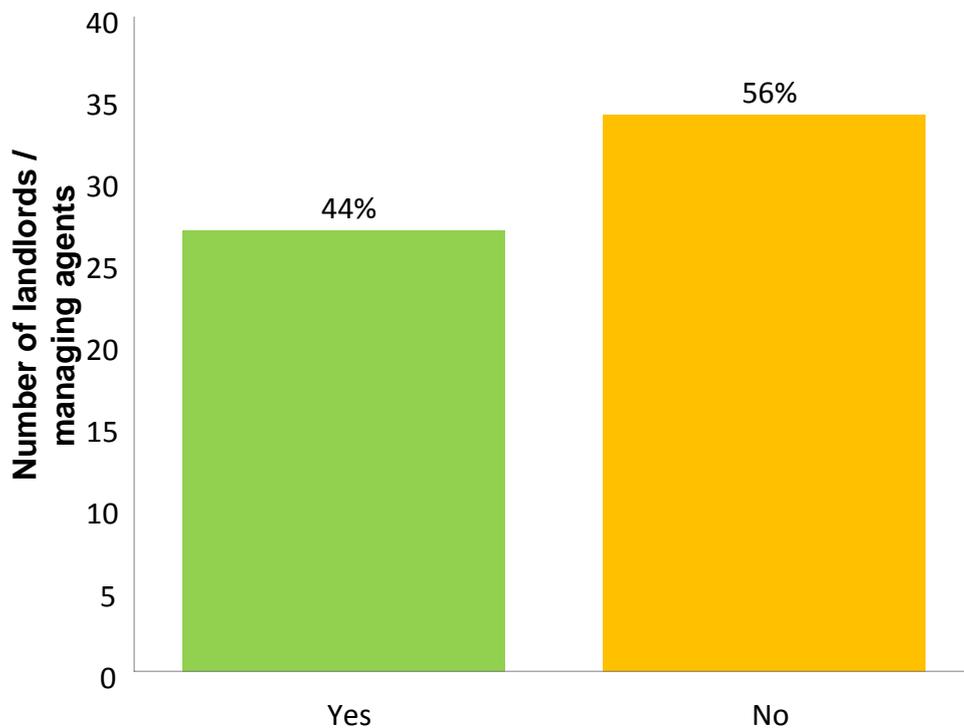


The majority of landlords agreed with including s257 HMOs within the scheme. One comment not supporting this idea was:

“There is a risk that the inclusion of two storey properties in the licensing regime will lead to a loss of capacity within the HMO sector. Although the CLG have stated there has not yet been an increase in homelessness where this has been introduced, this is based on just 7 pilot authorities with very different housing markets to Bedford, and only on 6 months data from 2011. At the present time, Housing services are under considerable pressure due to the introduction of benefit caps to the under 35’s, an increase in homelessness, reductions in hostel provision although demand is remaining steady and the shortage of social housing. We also have London Authorities actively offering incentives to Landlords of up to £2,000 per property to lease to them. This may be an attractive offer to a landlord to change a two storey HMO back into family housing and then lease to a London authority. If the introduction of licensing for two storey properties has any negative effect, this will be a further pressure on front line housing services. We consider that it would be prudent to undertake further research on the impact of implementing this policy on two storey properties before it is introduced. This would be in line with the Councils published Housing Strategy which outlines a review of HMO licensing is to take place in 2013/14.

Q15. Landlords reporting to be part of an association or professional body.

Figure 17.



Many landlords quoted the National Landlords Association as being the professional body they belonged to, but others mentioned included:

- Residential Landlords Association (RLA)

- NACA
- Association of Residential Letting Agents (ARLA)
- Royal Institute of Chartered Surveyors (RICS)
- The National Housing Association
- Chartered Institute of Purchasing & Supply
- Chartered Institute of Environmental Health Officers
- The University of Bedfordshire Housing Register

Appendix B

Table 1: Consultation responses from tenants, leaseholders, residents and the wider community.

Theme	Sample of comments
Views about the proposals to introduce additional licensing.	“I am well aware that not all private landlords in the Borough are good and that significant numbers of them are content to run a poor class of letting. I would welcome the fact that your Council is thinking about going down the licensing route and hope that you do not flinch from this course of action”.
	“The scheme is a good idea so that landlords can be checked and can maintain their property properly”.
	“This scheme should help to raise standards and protect some of the most vulnerable tenants in our area”.
	“This scheme will help landlords improve and fix problems”.
	“I agree with this scheme as it will put off those landlords who don’t take it seriously. If landlords use an agent they shouldn’t be entitled to turn up unannounced without any notice and should arrange an appointment via their agent”.
	“This scheme should improve the safety of housing for people and should be obligatory without a fee”.
	“Any successful licensing scheme needs to be enforced by the voluntary wishes of the tenants. It is the tenants who will bear the cost, so it is up to them to decide if they want this. If you want mandatory prices to enforce safety, you would be better concentrating on things like number of occupants per dwelling, or per unit area or whatever”.

Theme	Sample of comments
Concern relating to landlords management of rented accommodation	"My experience of landlords over the last 15 years has shown me that all tenants need to know their rights. Otherwise certain landlords will bully and harass them into accepting below standard conditions".
Views about what landlords should take responsibility for	"Licensing of landlords should improve responsibilities towards tenants rights and Landlords 'get out' clauses should be removed. Landlords can play on tenants desperation".
Other suggestions for the Council to help landlords	"The Council should check on properties and paperwork". "Landlords should be educated to stop seeing the Council as the enemy and ensure they area ware of the penalties for non – compliance".
Concerns about making the scheme successful	"Lack of interest from tenants and resistance from landlords". "Landlords converting properties into family use and public awareness".
Ideas to raise standards in the private rented sector	"Guidelines for landlords to meet before renting". "Publicise examples of good practice and action taken against bad landlords".
Other comments	"How do we ensure that the costs are not passed on to the tenants in increased rent"?

Appendix C

Table 2: Consultation responses from Landlords, Management Companies and Landlords Associations

After each comment a numbered Council response is given

Theme	Comments & Council Response	Agree ✓ Disagree X Don't Know ?
Economic Considerations and Costs		
Landlord	<ol style="list-style-type: none"> 1. <i>"It will not help those landlords/properties which are well maintained and managed – it's just another burden".</i> 2. <i>"As a landlord I do everything necessary to deal with these topics legally".</i> 3. <i>"The additional costs for landlords are unnecessary including upgrading properties to rent for HMO specifications e.g. fire doors etc".</i> 4. <i>"It should not be seen as a money raising exercise for the Borough Council! All finances must be transparent".</i> 5. <i>"It will result in unnecessary paperwork and additional bureaucracy".</i> 	X
Response No.1.	<ol style="list-style-type: none"> 1. The scheme will include all HMOs regardless of how they are currently run as the legislation does not allow for the separation between complying and non complying landlords. The current legislation and guidance confines a designation to either a part or the entire Borough for specified types of HMOs. The Council needs to show that there are a significant proportion of those types of HMO which are being managed ineffectively so as to give rise to problems for the occupiers or members of the public (the evidence is shown in the consultation document). Therefore there is no distinction within the designation for good or bad landlords. 	

	<ol style="list-style-type: none"> 2. However the efforts of responsible landlords and their agents will be considered by the Council in the pricing structure and sanctioning regime so that the compliant bear fewer costs than the non-compliant. Those landlords who choose not to meet the published HMO standards (available on the Councils website and also in paper format) and who do not register for licensing will not be eligible for discounts and may be prosecuted. 3. The HMOs are currently risk rated as they are inspected based on risk so that HMOs having the highest risk are subject to more frequent inspections to favour the responsible landlords who pose a lesser risk. 4. Each landlord will be given tailored and supportive advice to improve standards and safety within their property. This will include the most cost effective method for achieving basic standards of compliance. There is flexibility within the HMO standards for different ways to achieve the necessary safety features. It is anticipated (because of the Councils previous work on HMOs and the free availability of the standards, that most HMOs will not need more improvements). However each case will need to be considered by a qualified officer of the Council. Further free advice can be obtained by telephoning the HMO hotline on 01234 718516. 5. The Council are not permitted to make a profit from the scheme, they can only recover their costs and therefore this is not a money making exercise. 6. The Council will make it as easy as possible for landlords to apply including setting up a step by step on line process as well as providing help and support for landlords through an HMO helpline. 	
Landlord Association	<ol style="list-style-type: none"> 1. <i>The costs and level of staff to administer the scheme haven't been worked up and are not transparent.</i> 2. <i>The costs will be passed on to tenants in increased rents thereby reducing demand.</i> 3. <i>This is a job retention scheme for local authority staff otherwise threatened with redundancy.</i> 4. <i>Only the costs incurred through carrying out licensing functions can be recovered (and any irrecoverable costs in relation to management orders) not Housing Health & Safety Rating System (HHSRS) functions.</i> 5. <i>S257 HMOs shouldn't be included within the scheme as they are too resource intensive to identify because of the changes between owner occupation and short hold tenancies</i> 	X

	<p>6. <i>Penalty fees and fines for late applications are unlawful.</i></p> <p>7. <i>The costs of enforcement are not recoverable and should not therefore be included in the level of fees.</i></p> <p>8. <i>The level of inspection will need to be radically increased and require extra environmental health officers. There won't be enough inspectors to identify problems and there will be a backlog with an inability to prosecute.</i></p> <p>9. <i>Would landlords be able to pay over the period of a valid licence, or qualify for pro-rated refunds if the property changed tenure? Equally if a landlord had more than one property could they obtain a discount?</i></p>	
<p>Response No.</p>	<p>1. The costs have been identified and are outlined in Appendix E.</p> <p>2. The Council recognises that this could be a consequence; however it is not always the case that increased costs will reduce demand. The actual costs are quite small when you consider the fee is for 5 years licensing. It could work out as little as £57 per year. Tenants will pay for all overheads as this is part of the cost of running a letting business, we aim to keep the costs as minimal as possible. The Council also hope that consumer choice and awareness will also drive up standards at the bottom end of the market.</p> <p>3. This scheme will not be used to retain jobs within the Council – all costs which will be charged will relate to the additional administration of the scheme.</p> <p>4. The Councils costs that will be recovered will include only those relating to the licences. All inspection costs currently come out of existing budgets, this will not change. There is no intention to include HHSRS functions within the fee structure as this is totally separate.</p> <p>5. The Council want to ensure that the same standards are applied to s257 HMOs as all other HMOs which will fall within the scheme because they are often not properly managed, and fire safety has not been improved to modern standards. The Council receives significant numbers of complaints about this type of property.</p> <p>6. These 'fees and fines' which are suggested relate to the additional time it takes the Council to administer the scheme. Where landlords refuse to apply for a licence, the Council will have to chase them up which and late applications or incomplete applications will also require extra resources to administer.</p>	

	<p>7. The Council will not recover enforcement costs through the licence fees where they have taken a decision to take enforcement action where they relate to service of a notice, institution of legal proceedings, prosecution or imposition of a fine. These will be recovered separately either through the courts or through the existing charging policy of the Council.</p> <p>8. The scheme will be delivered over a 5 year period using existing resources allocating properties to officers within the team as part of their general workload. No additional officers will be employed. The Council will encourage on line applications to keep the administration simple and avoid backlogs.</p> <p>9. The pricing structure is illustrated in Appendix E.</p>	
<i>Management Company</i>	<i>A blanket licence should be issued for all letting agents who in turn will require landlords to prove to them that they have a licence before agreeing to market or manage their properties for them.</i>	✓
Response No.	Under the Housing Act 2004 the licence which is issued relates to each property. There is no provision in the Act to issue blanket licences and therefore this is not legally possible.	
<i>Landlord</i>	<i>There are too many demands already placed on landlords which they have to adhere to already. Deadlines can be easily missed.</i>	X
Response No.	The Council recognises that there are already a large number of demands on landlords and wants to provide help and support through tailored advice and guidance. We will also consider building into the process reminders of important deadlines.	
<i>Landlord</i>	<i>More enforcement is needed not licensing.</i>	X
Response No.	If the proposed scheme goes ahead it will be resourced to ensure that it could be policed effectively including undertaking street surveys to find rogue landlords who refuse to apply for a licence. The Council believe that these landlords are in the minority and that the vast majority wish to do the right thing. We think that additional licensing will help them to improve standards without having to use enforcement. This will help achieve a pro-active whole market improvement rather than tackling individual cases in a piecemeal way. Case by case enforcement is time consuming and so provides poor value for the improvements achieved. The publicity and increasing awareness delivered by the scheme will help make for more cost effective raising of standards.	

<i>Landlord</i>	<i>Licensing small family homes shared by groups of 2, 3 or 4 people is not advantageous for tenants or landlords. Accreditation and laying out standards fit for purpose that do not incur pointless costs are sensible for everyone. If 40% do not comply they are the high risk ones not those accredited with the university. £400 fee is too much for one property with 3-4 people.</i>	X
Response No.	The Council recognise that there needs to be a risk based approach to inspection and will target the highest risk properties first. The standards applied to the different types of HMO accommodation including student houses will also be tailored to the level of risk.	
Making the case		
<i>Landlord Association</i>	<i>The Council hasn't demonstrated that there is a case for an additional licensing scheme:-</i> <ol style="list-style-type: none"> <i>1. To extend the scheme to the whole of the Borough.</i> <i>2. To identify that are a significant number of HMOs that are being ineffectively managed.</i> <i>3. To show there are problems with fire safety and ASB.</i> <i>4. To demonstrate bringing empty homes back into use</i> <i>5. To improve the condition of the housing stock.</i> <i>6. The Council shouldn't use 'perception' as a form of evidence.</i> <i>7. The level of complaints received by the Council does not show a problem with HMOs.</i> <i>8. There are no details about how the effectiveness of the scheme will be monitored.</i> <i>9. The Council haven't demonstrated how they have co-ordinated their approach for homelessness, empty properties and antisocial behaviour.</i> 	X
Response No.	<ol style="list-style-type: none"> 1. The Council have identified that the majority of HMOs are situated within the inner urban areas of the Borough and as part of the feedback from our consultation have re-considered whether to reduce the proposal to just cover the inner urban wards which include: Brickhill, Castle, Caudwell, De-Parys, Goldington, Harpur, Kempston East, North & West, Kingsbrook, Newnham, Putnoe and Queens Park. However if the area were to be reduced there would be unfair competition between landlords and their properties, as well as an inconsistent approach to standards of HMOs across the Borough. 2. A risk assessment has been undertaken and it is estimated that more than a third of HMOs within the Borough are not broadly compliant with basic fire safety and management standards. 	

- | | |
|--|---|
| | <ol style="list-style-type: none">3. The local fire authority have reported that there were 21 fires last year associated with HMOs within the Borough. This is considered to be an unacceptable level of risk locally within this sector. There are also high levels of ASB reported within the inner urban areas of Bedford compared to surrounding towns.4. The Council have a co-ordinated strategy to bring empty properties back into use through their Housing Strategy and the Council will identify and work with landlords who have empty properties and the homelessness team to encourage them to rent them out within the sector to increase the supply of housing locally.5. The Council will improve the housing stock condition as part of a co-ordinated approach through its housing strategy.6. Perception is a perfectly acceptable and valid form of evidence and there are many examples, where it has been used to influence national government policy, for example the National Audit Offices undertakes an annual Business Perception Survey each year.7. Although the total numbers do not appear large, responding to complaints about HMOs do take a significant amount of resource in terms of inspector's time and administration to deal with. An average complaint takes approximately 2 weeks of an individual inspector's time to investigate and resolve (not including enforcement action). This is not a cost effective way to improve standards. Additional licensing is pro-active rather than re-active, it aims to lead from the front with improvements rather than dealing with the fall out from poor housing.8. The Council will monitor the improvement in compliance amongst the HMO housing stock using a risk assessment model and scoring system. It will be able to measure the improvement in compliance over a 5 year period.9. The Council will co-ordinate their approach which is set out in the Councils housing and homelessness strategies. |
|--|---|

Management Issues		
<i>Landlord</i>	If a reminder is sent it would help the landlord to apply in time.	✓
Response No.	The Council will consider building into the process reminders of important deadlines to help landlords apply in time.	
<i>Landlord</i>	A free online registration form should confirm standards are met and understood with a £60 fee for a search to check that the landlord is fit to be a landlord.	X
Response No.	The Council have estimated that this would not cover the administration time to process the application and therefore need to charge more to recover their costs.	
<i>Management Company</i>	<i>There should be one fee for each letting agent to cover all of their business.</i>	✓
Response No.	There isnt a provision within the legislation to allow for this form of fee structure specific to letting agents as it is based on each HMO.	
Consideration of alternatives		
Landlords Association	<p><i>The Council haven't properly considered alternatives to an additional licensing scheme e.g.</i></p> <ol style="list-style-type: none"> <i>1. Tackling rogue landlords through tougher enforcement.</i> <i>2. Using accreditation.</i> <i>3. HHSRS enforcement if voluntary co-operation doesn't work.</i> <i>4. Improved Area Management.</i> <i>5. PEAL Project Hull.</i> 	X
Response No.	1. The Council is committed to tackling these landlords and as a result of the scheme it will be able to identify and target them through increased intelligence from street surveys of the local market. The Council will not endeavour to prosecute landlords that comply with the	

	<p>requirements of the proposed scheme.</p> <ol style="list-style-type: none"> 2. The Council considered an accreditation scheme but drawing upon evidence from the Dept for Communities Local Government (DCLG) impact assessment for the Homelessness (Suitability of Accommodation) (England) Order 2012 felt that this would be more expensive for landlords than requiring a basic legal standard. 3. HHSRS enforcement is an alternative, however it is more resource intensive for the Council than the administration associated with an additional licensing scheme. Where a landlord's HMO is granted a licence, it would be unusual that HHSRS enforcement would be required. 4. Grants for area improvements are unfortunately no longer available. 5. The Council is reluctant to invest so many additional resources, including the cost of training landlords, without having any real tangible outcomes delivered for the Council in return. For example, the evaluation of this initiative showed that there are still a significant number of outstanding inspections required and a reduction in housing service requests was not achieved, especially in environmental crime and anti social behaviour. This initiative also required all partners to be totally committed to the scheme when they have other competing priorities, therefore they do not provide the resource required to achieve better results. This has resulted in a project which isn't sustainable and has lost momentum. 	
<p><i>Landlord Association</i></p>	<p><i>Why doesn't the Council consider other courses of action, for example:</i></p> <ol style="list-style-type: none"> 1. <i>Use of criminal behaviour orders</i> 2. <i>Crime prevention injunctions</i> 3. <i>Issuing improvement notices</i> 4. <i>Directions for the disposal of waste</i> 5. <i>Litter abatement notices</i> 6. <i>Noise Act 1996</i> 7. <i>Prevention of Damage by Pests Act 1949.</i> 8. <i>Enforcement notices</i> 9. <i>Management Orders</i> 	<p>X</p>
<p>Response No.</p>	<p>The Council have in the past used a wide range of these powers to tackle specific problems, however they are piecemeal and very resource intensive usually on a case by case basis. Additional licensing</p>	

	will help galvanise the market to bring pro-active improvements for all of these issues together within one scheme thus saving valuable time and resources for all concerned.	
Legal Issues & Sanctions		
<i>Landlord Association</i>	<i>The Council haven't followed the DCLG guidance 'Approval steps for additional and selective licensing designations in England' because there isn't a detailed explanation of the designation explaining the reasons for it, how it will tackle specific problems and the potential benefits. The information provided to comment upon isn't robust enough for the Council to base evidence upon (Regina -v- Hyndburn Borough Council, Court of Appeal).</i>	X
Response No.	The Council have followed the steps set out in the DCLG guidance. The detailed explanation for designating the area is because significant proportions (over a third) of all HMOs in the Borough are not broadly compliant with fire safety and management standards. This brings with it significant problems for those occupying HMOs in that they are not secure, possibly attracting anti social behaviour in the common parts and surrounding areas, there is no joint management of the properties, so they are not repaired and the common parts are not made safe from fire. This results in many complaints to the Council which have to be tackled on a piecemeal basis. This designation will help tackle the anti social behaviour identified in the inner urban areas by improving management, repair and security as well as fire safety. The aim is to increase compliance from 62% to 85%.	
<i>Management Company</i>	<i>"I don't agree with the fee, I think that this scheme should be funded through the Council Tax"</i>	?
Response No.	This would be an alternative way of funding the scheme but unfortunately the Housing Act 2004 doesn't permit the cost of the licensing scheme to be raised by Local Authorities in this way.	
<i>Landlord</i>	<i>At least a year should signal the start date of penalties being applied for late applications.</i>	X

Response No.	As a result of the consultation the Council have considered the pricing structure and will not be applying penalties. They will however charge a standard rate for the additional administration required to chase up and process late or incomplete applications.	
<i>Landlord</i>	<i>12 months should be allowed for changes so that tenants can complete their Assured Short hold Tenancy and the landlords can change to family lets or sell the property.</i>	X
Response No.	The Council wants to make this scheme affordable for landlords so that they are not forced to convert to family lets or to sell their property. We would like to work closely in partnership to prevent this type of impact from happening and would welcome ideas for reducing this response to the scheme.	
<i>Management Company</i>	<i>There should be six month's notice from October 2013. Landlords should be informed in writing twice before sanctions are applied. Fines should be staggered at £500, £1999 and £1,500 for not applying for a license depending on the attitude of the landlord.</i>	✓
Response No.	The Council plan to give an early bird discount and six month's notice before the administration costs are increased. These will be based upon an hourly rate and the fee structure is identified in Appendix E.	
<i>Landlords Association</i>	<ol style="list-style-type: none"> 1. <i>The Council shouldn't use Council tax exemptions to identify HMOs as it is a contravention of the data protection act.</i> 2. <i>The Council's standards are unreasonable, for example the installation of wash hand basins.</i> 3. <i>A standardised requirement to comply with the management regulations in the licence conditions introduces double jeopardy.</i> 4. <i>How will the Council satisfy themselves that Part 1 functions have been complied with?</i> 	X
Response No.	<ol style="list-style-type: none"> 1. The Housing Act 2004 specifically encourages data sharing with Housing benefits and Council tax to allow the best information to inform our decisions and inspection programmes. There is, therefore, no breach of data protection rules in this case. We currently work closely with other departments, but only as permitted in the Housing Act 2004. 2. The Councils good practice guide does not require wash hand basins in rooms as standard. 3. The Council accept this and will not incorporate it as a licence condition. 	

	<p>4. The Council have taken a range of actions under Part 1 of the Housing Act 2004. This includes inspection and review as well as the service of improvement, prohibition and hazard awareness notices to tackle category 1 and 2 hazards in HMOs and private rented accommodation. They have also designed a local fire safety guide, based on national guidance, which is delivered with Bedfordshire and Luton Fire and Rescue Service.</p>	
<p>Support for landlords</p>		
<p>Management Company</p>	<p><i>Grants and area improvements to target the bad properties more, would help, with no prosecution.</i></p>	<p>?</p>
<p>Response No.</p>	<p>The funding the Council used to receive from the Government to offer as grants/loans is no longer available, which means that there is no longer any financial assistance to improve properties. However certain loans are available for the improvement of HMOs. More information is available from the Council on 01234 718516.</p> <p>Most landlords want to do the right thing and need support to help them comply. Unfortunately however there are still a minority of landlords who are wilfully non-compliant and in those cases prosecution is the most appropriate sanction to apply for the benefit of everyone operating in the market.</p>	
<p>Landlord</p>	<p><i>Free online accreditation with a reduced procedure for those accredited with the University or a Landlords Association.</i></p> <p><i>Concrete checking that the landlord is fit to be a landlord.</i></p> <p><i>Tenants can check accreditation of landlords on line and can report lack of compliance to Council.</i></p>	<p>X</p>
<p>Response No.</p>	<p>The Council are keen to support landlords and will consider whether to introduce an on line register of accredited landlords or those issued with a valid licence. This will have to be weighed against the risks of placing information of this nature in the public domain.</p>	
<p>Management Company</p>	<p><i>Promotion of the scheme on the website should be in different languages e.g. Polish, Urdu, Punjabi and Hindi. There should be incentives for landlords including a 50% early bird discount within the first</i></p>	<p>✓</p>

	<i>six months and a deadline date should be set and advertised.</i>	
Response No.	The Council will consider placing key information on the website in different languages to support compliance. It is also important to support compliance and offer incentives which is why in our reviewed pricing structure we confirmed generous early bird discounts for submitting applications within the deadline period.	
<i>Landlord.</i>	<i>There should be on line support for landlords for example an on line landlords forum linked to the Councils website.</i>	X
Response No.	The Council would like to provide help and support to landlords and will be working on the introduction/ future of a landlord's forum (this has already been part of the Councils service to landlords). Extending this to an online forum for exchange of ideas, good practice and information for landlords is a really good idea that we are pleased has come out of this consultation.	
<i>Management Company</i>	<i>The Council should help landlords evict problem tenants who haven't paid their rents from their property and not support them so much.</i>	X
Response No.	The Council recognise the concerns landlords have about the eviction process. As this is national legislation the proposed scheme cannot influence this. However we will work with landlords to ensure they understand the tenancy provisions and the eviction process and apply them correctly. The Council will where necessary and in the public interest, take action against tenants that can be shown to be in breach of their responsibilities under the applicable Management Regulations.	
<i>Landlord Association</i>	<i>Landlords should not be expected to tackle anti-social behaviour. The Council shouldn't publicise where HMOs are situated as it will increase burglary in those areas.</i>	X
Response No.	The Council has no intention to make landlords responsible for anti-social behaviour (ASB) of their tenants and would not impose licence conditions to that effect. What the Council would expect is that landlords undertake to ensure that the management of the HMOs they operate is of a sufficient standard to enable early intervention where ASB is identified; that landlords undertake to report ASB to the appropriate authorities as soon as they become aware of it; that security arrangements are sufficient and that consideration of ASB is part of the tenancy arrangements with landlords and that there are sufficient clauses within their tenancies to allow for proportionate actions to be taken within	

	<p>the boundaries of the law e.g. warnings about behaviour, which if fail, lead to the eviction of the tenant. The Council will, where it is in the public interest to do so, take action against tenants that can be shown to be in breach of their responsibilities under the Management Regulations.</p> <p>The Council recognise that this could be a risk and will consider what information they place on the website to make sure that individual properties are not targeted and will liaise with the police in this respect. There are examples of existing schemes where information has been publicised and the level of burglary has not increased.</p>	
General Comments		
<i>Landlord Association</i>	<i>The decision has already been made not a proper consultation.</i>	X
Response No.	This is a genuine consultation and a decision will be made in January by the Councils Committee on the evidence presented, both for and against the scheme, taking account of all stakeholders' views.	
<i>Landlord</i>	<i>Be supportive of good landlords and beware of minority bad landlords.</i>	X
Response No.	The Council will be supportive of the good landlords by administering the scheme as outlined in response no 1.	
<i>Landlord</i>	<i>Homelessness could result if landlords do not want to pay which will increase service charges for flats.</i>	?
Response No.	We do not expect that Additional Licensing will cause serious problems with tenant displacement and homelessness but accept that this could be a consequence. If this happens we suspect it will be where HMOs are not well managed or up to standard and the landlord is attempting to avoid licensing. However, the Council operates a comprehensive and effective homelessness prevention service that works with both tenants and landlords to try to prevent homelessness in these circumstances.	

<i>Landlord</i>	<i>Landlords who already register with the local university should be exempt from this scheme.</i>	X
Response No.	At present it is planned to welcome those accredited through the university into our licensing scheme to ensure that the same standards apply for the whole sector. Fee discounts and acceptance of the good standards that this sector already achieves is part of the additional licensing scheme.	

Appendix D: Extra comments relating to the free text questions 16,17,18

Q 16. Obstacles to successful implementation	
	<ul style="list-style-type: none"> • <u>Overcrowding</u>: too many people being squashed into one property • <u>Tracing landlords</u>: Especially those overseas. • <u>Resourcing</u>: The ability of the Council to track down landlords and to administer the scheme without a 6 month backlog and inability to prosecute. There won't be enough inspections to identify the problems. Unscrupulous landlords will raise their rents to cover their penalties. • <u>Market</u>: A shortage of cheap accommodation means desperate tenants taking sub-standard properties. Rents also likely to increase as a result. Landlords converting property to family usage resulting in increased homelessness.
Response No.	It is intended that this scheme will help tackle problems such as overcrowding in HMOs. Intelligence will also be gathered to trace those landlords who are responsible and the fees and charges will pay for the resources required to successfully administer it. We will work closely with landlords and letting agents to discourage unreasonable fees for tenants and to reduce homelessness.
Q17. Other suggestions for raising standards in the private rented sector	
<i>Incentives for Landlords</i>	<ul style="list-style-type: none"> • <i>Improvement grants and free professional services for landlords.</i> • <i>High standard properties should be given free adverts in the paper.</i> • <i>Don't charge for a licence if the HMO is brought up to standard within the 1st year of the scheme.</i> • <i>Champion landlords who sign up early and use social networks.</i> • <i>Early bird discounts.</i>

	<ul style="list-style-type: none"> • Publicise good practice and action taken against landlords. • A star rating scheme for landlords e.g. 5* for the good ones
Response No.	The Council are considering the promotion of licensed HMOs and their landlords on their website and will introduce a generous 1 year early bird discount. The fee structure is outlined in Appendix E.
<i>Information and advice</i>	<ul style="list-style-type: none"> • Improve information to tenants about lifestyle to reduce complaints about damp and mould. • A website with FAQ with telephone support lines. • Link from Bedford Borough Council website to a landlords forum. • Offer free advice on standards to landlords. • Operate a system like car tax – you have to provide up to date documentation. • Increased training for letting agents and landlords.
Response No.	The Council intend to establish a landlords forum to share information and provide support.
<i>More enforcement and regulation</i>	<ul style="list-style-type: none"> • Firmer planning regulations on the conversion of family houses into HMOs. • Random visits and compulsory checks of properties. • Independent audits to examine if there are links between bad landlords and corrupt Council officials.
Response No.	The Council will continue to enforce for the small minority who decide to flout the law but this will be undertaken alongside the additional licensing scheme. If there are specific cases where there are concerns about Council officials there are a number of channels through which you can officially complain. You can complain to the Head of Environmental Health and Trading Standards directly or via the Council’s Corporate Complaints Procedure which can be found at http://www.bedford.gov.uk/council_and_democracy/complaints_and_other_feedback.aspx
<i>Other</i>	<ul style="list-style-type: none"> • Increased liaison to co-ordinate with other agencies to deal with problems. • Use accreditation through the NLA.

Response No.	The Council currently works in partnership with a number of local agencies to improve standards within HMOs this includes the Bedfordshire and Luton Fire Service as well as the Police and is an active member of the local Anti Social Behaviour Group.
Q 18. Other Comments	
<i>Residents</i>	<ul style="list-style-type: none"> • <i>Lack of statistics and evidence for extra fire safety works</i> • <i>A worthwhile project that will eventually raise standards</i> • <i>Too many homes in the Poets and Castle Road area have become HMOs increasing noise and disturbance to residents also poorly maintained properties attract crime and drugs activities.</i> • <i>Over occupation of terraced and semi-detached properties is becoming an issue. It shouldn't be allowed in modern semi detached properties where the walls are not thick enough to limit the noise.</i> • <i>A full economic review should be undertaken and published before the scheme goes ahead.</i> • <i>It's a brilliant idea to stop the cowboys jumping on the band wagon and making more money off people who are down on their luck.</i>
Response No.	It is intended that this scheme will help identify those properties where there is overcrowding to improve standards including fire safety.
<i>Tenants</i>	<ul style="list-style-type: none"> • <i>Tenants need to know their rights otherwise they will be bullied and harassed into accepting below standard conditions.</i> • <i>Special arrangements should be made for vulnerable tenants and landlords should listen to them.</i> • <i>Requiring landlord to get references from their tenants could be a barrier to helping deal with homelessness.</i> • <i>How will the Council enforce against those who are not known to the Council, receiving cash in hand payments and avoiding the law?</i> • <i>The basic idea is good but landlords need to be helped with lower fees and paying a small amount per month.</i> • <i>The scheme should improve the safety of housing and should be obligatory without a fee.</i> • <i>Rents should be capped to stop landlords putting them up.</i>

	<ul style="list-style-type: none"> • Licence fees too high and should be less. • I welcome this and hope that the Council doesn't flinch from this course of action.
Response No.	The Council provide support, help and advice to vulnerable tenants including helping them to understand their rights with landlords. More information is available from Bedford Borough Councils Housing Advice and Options team housing.advice@bedford.gov.uk
<i>Landlords</i>	<ul style="list-style-type: none"> • I wholeheartedly applaud the idea so that I don't have to compete on price against the cowboys. I suspect it will lead to higher rents for better quality housing. • I am concerned about the cost of the works and having to re-house the tenant for substantive changes. • How can landlords pay these fees when the tenants are not paying their rents? • The whole of the Midland road area needs cleaning with drugs being passed freely on the street. • A worthwhile project which will eventually raise standards. Local landlord assist in providing accommodation which otherwise would not be available. • Accreditation should be free. • I am concerned about inconsistency in enforcement by different staff at the Council especially the use of temps. • There is no evidence and this is just another tax on landlords. • Managing agents should be accountable for encouraging multiple lets making more money which the landlord doesn't know about. • Licensing and penalties are more likely to drive the rogues under the radar. • This should not be seen as a money raising exercise by the Council. • Standards should be publicised as they may deter landlords from registering. • There is a perception that the fee structure is to raise funds for the Council rather than to encourage an improvement in standards in rented properties.
Response No.	The Council intend to use this scheme to ensure that the costs to improve standards are reasonable, and to improve anti-social behaviour in HMO hotspot areas. The fees structure is outlined in Appendix E and will be used to recover the costs of administering the scheme. The Council are not permitted to make a profit.
<i>Managing Agents</i>	<ul style="list-style-type: none"> • We really hope this doesn't come into force as it is just another tax on landlords. • Please ensure consistency of standards and don't employ temps. • Property owners are seen as an easy target for making money.

Response No.	The Council will ensure consistency by requiring staff who are employed to follow the Housing Enforcement policy which is available at: http://www.bedford.gov.uk/housing/housing_advice_options/housing_enforcement_policy.aspx
<i>Leaseholders</i>	<ul style="list-style-type: none"> • <i>A victim of a campaign by the Council to install new fire alarms.</i> • <i>If we have to pay an up front fee we want to see up front action including door to door inspections out of hours to ensure access.</i>
Response No.	The Council will be undertaking door to door surveys in the evenings to help gather intelligence about non-compliant landlords.
<i>Other partners</i>	<ul style="list-style-type: none"> • <i>We commend your efforts and believe this will represent a significant step forward in the safety of the sector generally driving down serious injuries and fatalities due to fire.</i> • <i>This scheme will have to have sufficient manpower to make sure it works and backed up with a policy of prosecuting landlords who do not apply by the deadline date.</i> • <i>There is a risk that the inclusion of 2 storey properties in the licensing scheme will lead to a loss of capacity in the private rented sector. As housing services are under pressure due to benefit caps to under 35s there is a risk to increased homelessness and a rise in demand with a shortage of social housing. It would be prudent to undertake further research on the impact of implementing this policy on two storey properties before it is introduced.</i>
Response No.	The Council will work closely with landlords and tenants to help prevent homelessness.

Appendix E

Pricing structure including additional charges for late applications etc

HMO Type	Applications received within 1 st Year	Applications received 2 nd year onwards
All HMOs	£285 discounted rate as long as the application is completed by 6 th May 2014 and no chasing is required.	£500 after 6th May 2014.
Landlords who are part of a professional accreditation scheme including the local student scheme	£285 discounted rate as long as the application is completed by 6 th May 2014 and no chasing is required.	Grandfathered in from University list until 6 th May 2014.
Extra charge for incorrect application	20% of application fee	20% of application fee
Portfolio landlords	1 st HMO – whatever fee applies	2 nd and subsequent, properties entitled to a 43% discount per property unless there is chasing required, in which case each incorrect or chased HMO has extra 20% admin fee charged.

- There will be a 1 year discount and ‘honeymoon’ period from May 2013 to May 2014 and assumes a 70:30 split for receiving applications at discounted and non-discounted rates respectively.
- In addition to these fees Landlords applying after May 2014 may be prosecuted for non compliance and may be subject to rent repayment orders.
- Each case will be judged on the level of compliance, overcrowding lack of certificates, fire risk etc and so on. There will be an appeal to the Head of Environmental Health & Trading Standards if the landlord thinks the fees have been unfairly set.
- If the form is not completed correctly or the Council have to chase the application for certificates – the discounted or full fee will increase by 20% to cover the extra administration associated with it.
- For portfolio landlords the first HMO is charged at the full rate (either at first year costs or second year onwards costs) and then the further properties are charged at a 43% discount for each additional HMO in line

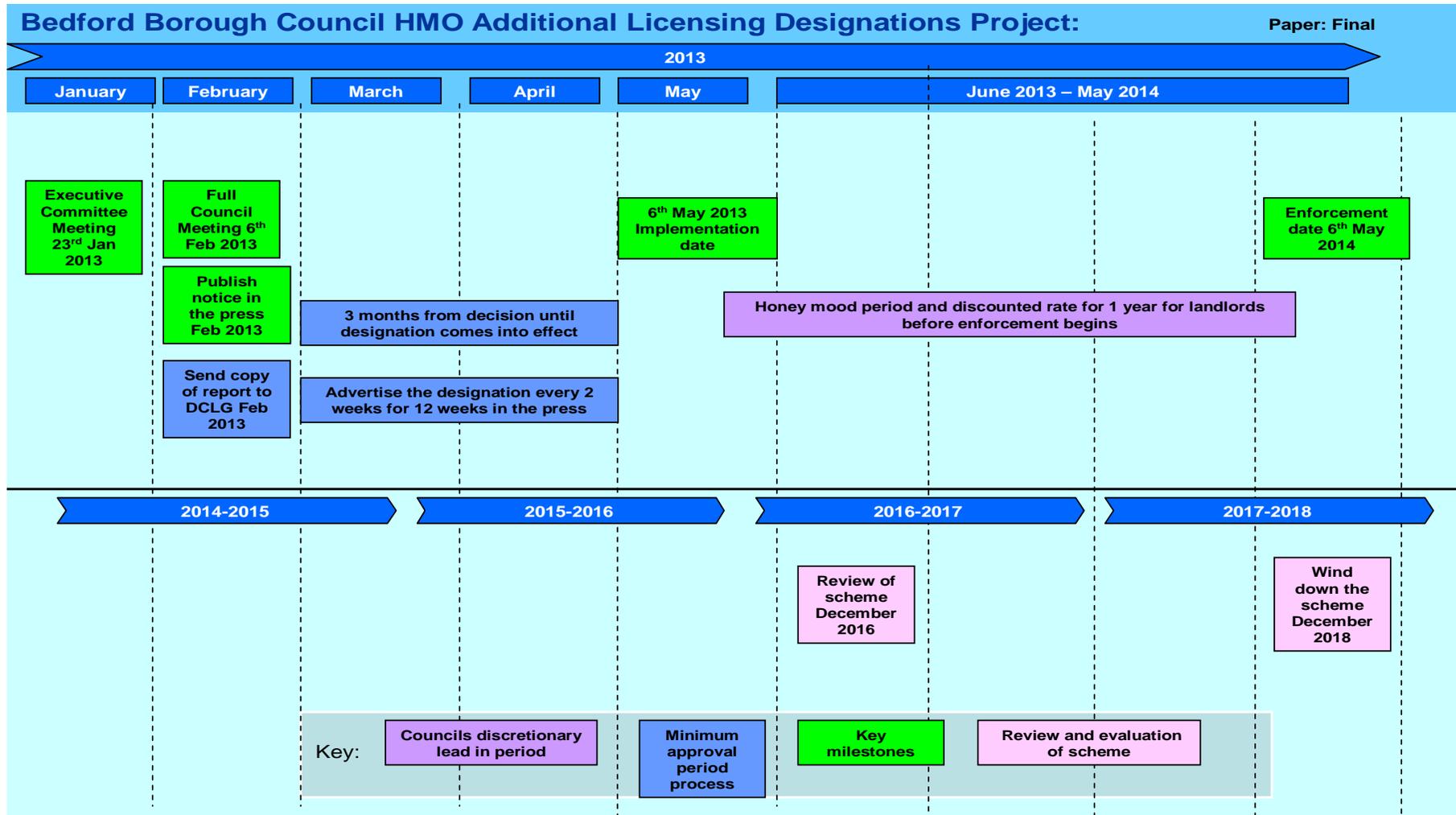
with the current charging policy applied to re-licensing of mandatory licensable HMOs.

- If the certificates have to be chased or the forms are not correct – again a 20% administration charge will apply to each HMO affected.
- The payments must be made in full for the 5 year period through a cheque payment or an online electronic payment.
- Forms will be made available online to download and complete in writing or may be completed electronically using an online form.
- The discounted fee of £285 will apply for those landlords who are members of a professional accreditation scheme in the first year (any such scheme must make an assessment of the professional management standards and fire safety provisions within the property).
- The basic fee of £500 comprises the following breakdown of administration costs:

Staff Administration Cost by Officer and Hourly Rate (includes overheads)

Administration Staff	(£26 p/h) @ 11 hrs	£286
EHO (HMO Licensing)	(£33 p/h) @ 3 hrs	£99
SEHO	(£38 p/h) @ 2 hrs	£76

Appendix F - Timescale for implementation and review of the scheme (subject to approval)



Appendix G
Representative landlord group responses.



National Landlords Association:

*Response to the Bedford Council
November 2012*

Introduction

1. The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords.
2. With more than 20,000 individual landlords from around the United Kingdom and over 100 local authority associates, we provide a comprehensive range of benefits and services to our members and strive to raise standards in the private rented sector.
3. The NLA seeks a fair legislative and regulatory environment for the private rented sector while aiming to ensure that landlords are aware of their statutory rights and responsibilities.

General Comments

4. The National Landlords Association (NLA) would like to thank Bedford Council for providing the opportunity to comment on this consultation.
5. The legislation in relation to Additional Licencing clearly states that the introduction of licencing has to be evidence based.
6. Licencing will not resolve the problems that are raised by resident groups, to imply that it will is disingenuous by those who propose licencing as a solution.
7. The NLA believes that any regulation of the private rented sector needs to be carefully balanced. Additional regulatory burdens must focus on increasing the professionalism of landlords, the quality of private rented stock and driving out the rogue landlords – who blight the sector. It should be the shared objectives of all parties involved to facilitate the best possible outcomes for landlords and tenants and as such good practice should be recognised and encouraged in addition to the required focus on enforcement activity. In light of the current economic climate, the last thing good landlords need is regulations or licencing schemes; particularly where there appears to be limited direct and immediate benefit to landlords or tenants.
8. Additional licencing is undoubtedly a powerful tool for local authorities when used appropriately. However it should be considered in the spirit of the legislation and not as a tool targeted at a specific group. We therefore, propose working in co-operation between landlords, tenants and other stakeholders as a way to resolve many of the problems that are alleged.
9. The introduction of further regulation, alone does not solve problems such as those identified by the local authority; this is especially true in relation to anti-social behaviour. The use of licencing in roads which have deep rooted problems is appropriate, and Bedford Council should investigate this where problems exist, not ward wide as it will fail to address the underlying fundamental issues. It also creates additional cost to the council in a time when resources are under pressure.
10. In the argument put forward by the council in relation for the introduction of Additional Licencing, highlights the failure by the council to use current powers. Why does the council require additional

powers when it fails to use its current powers in relation to issues that are raised with current HMO's?

Consultation Questionnaire

11. The Department for Communities and Local Government guidance document 'Approval Steps for Additional and Selective Licensing Designations in England' states that "during consultation, local housing authorities (LHAs) must give a detailed explanation of the proposed designation, explaining the reasons for the designation, how it will tackle specific problems, the potential benefits etc". This guidance was confirmed by Mr Justice McCombe in *Regina (on the application of Peat and Others) -v- Hyndburn Borough Council, Court of Appeal - Administrative Court [2011] EWHC 1739 (Admin)*.
12. We do not believe the information provided to comment on has the robustness for the council to base evidence on. Therefore, we are of the opinion that the information currently presented does not provide sufficient justification under the Housing Act 2004, Communities and Local Government Guidance or *Hyndburn Judgment* to meet the correct procedural requirements for the creation of an additional licensing designation.
13. The consultation does give a calculation of the costs pertaining to the introduction and implementation of Additional Licencing. Significant questions remain, including; would landlords be able to pay over the period of a valid licence, or qualify for pro-rated refunds if the property changed tenure? Equally if a landlord had more than one property could they obtain a discount?

Property and Management Standards

14. Section 56 (2) of the Housing Act 2004 states that the local authority may only designate an area for additional licensing if the local authority considers "a significant proportion of HMOs ... are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more problems either for those occupying the HMOs or for members of the public".
15. A prescriptive list of requirements such as those which form the basis for every licensing scheme will not solve the problem of poor internal or external conditions. The root cause being landlords' ignorance of their statutory duties or obligations. The use of Section 215 Town and Country Planning Act 1990 by councils can address many of these problems. Thus, council using the powers they already have would achieve many, if not all of the aims.

Resources

16. Another key concern over the creation of this scheme is the question of local authority resources. It is well known that in this time of austerity, local authorities are being asked to do more by central government with fewer resources. The administration of a licensing scheme is costly in terms of both officer time and a financial commitment. This is especially true around the additional resources that the council will have to deploy around the issues that are raised due to the conditions that the council wishes to impose on landlords especially with the welfare reforms coming in.

17. At a time when local authority budgets are being reduced, we believe that the remaining resources should be allocated to targeted enforcement against the worst, rogue landlords. By way of an example, in 2009 Swansea City and Borough Council spent approximately £272,000 on its mandatory and discretionary licensing schemes (of which approximately £243,000 came from landlords paying the application fee)¹. This caused a shortfall of £29,000 for the local authority and we would argue this money could have been better spent employing additional Environmental Health Officers to target sub-standard and poorly-managed properties.
18. The changes in the housing sector have seen the average age of first time buyers increase to over 36 years old, waiting lists for social housing increasing, along with an increase in single occupiers. This has meant that many more people are looking to the private rented sector for their housing needs. Restricting the number of properties through licensing only increases the cost for all who use the private rented sector across the area.

Other courses of Action

19. Section 57 (4) of the Housing Act 2004 states that a local authority "must not make a particular designation ... unless (a) they have considered whether there are any other courses of action available to them ... that might provide an effective method of dealing with the problem or problems in question". The consultation document makes no mention of any other measures taken, whether by Bedford Council or any other body to reduce the problems associated with HMOs. In particular:
 - o Use of Criminal Behaviour Orders,
 - o Crime Prevention Injunctions
 - o Issuing improvement notices to homes that don't meet the decent homes standard
 - o Directions regarding the disposal of waste (for example under section 46 of the Environmental Protection Act 1990);
 - o Litter abatement notices under section 92 of the Environmental Protection Act 1990;
 - o Powers under the Noise Act 1996 to serve fixed penalty notices or confiscate equipment (sections 8 and 10);
 - o The power to require rubbish to be removed from land under section 2 – 4 of the Prevention of Damage by Pests Act 1949.
20. The NLA agrees that some landlords, most often due to ignorance rather than roguish intent, do not use their powers to manage their properties effectively. A more appropriate response would be to identify issues and assist landlords to develop the required knowledge and skills to improve the sector through the NLA Accredited Landlord Scheme.
21. The NLA would also argue that a problem encompassing a few poorly managed and/or maintained properties would not be appropriately tackled by a licensing scheme that is out of proportion. In such situations local authorities should consider Enforcement Notices and Management Orders. These measures represent a targeted approach to specific issues, rather than a blanket licensing scheme that would adversely affect the professional landlords whilst still leaving the rogues able to operate under the radar.

¹ Response from Swansea City and Borough Council on 31 March 2010 to an NLA request under the Freedom of Information Act

Accreditation

22. Development-based accreditation changes the behaviour of landlords; in a way that blanket licensing does not. We believe the aims highlighted in your consultation document can be better achieved through accreditation than additional licensing. The NLA strongly believes that giving landlords the knowledge to effectively manage their properties is a drastically more efficient tool for raising property standards and professionalising the private rented sector. Through this method it also allows the council to peruse the more criminal element.
23. The need to address rogue landlords which are undermining the private renting sector is acknowledged by the NLA. The Association is keen to work with local authorities in addressing these problems, and in doing so has introduced a national landlord accreditation scheme. This is available to any landlord and local authority. It applies the same standard across the country and focuses on ensuring the landlord has the knowledge and management skills to run a lettings business, and so impacts upon their entire property portfolio, rather than just focussing on prescriptive property conditions, which often vary from area to area. Landlords also have to commit to a minimum level of continuous professional development (CPD), updating their knowledge on new legislation and best practice – something licensing schemes rarely, if ever, require. This approach not only brings a more professional approach to the lettings market, it increases landlords' awareness of their responsibilities and obligations.
24. The use of NLA Accreditation by Bedford Council will achieve many of the aims that the council/residents wish – the rest can be obtained through the criminal justice system without licensing. The NLA accreditation is UK wide and would not cost the council any money in administration.

Conclusion

25. The aims that the council has identified, i.e. removing nuisance, can be achieved through a more selective methodology, which Additional Licencing will not and cannot achieve. The risk of introducing Additional Licencing in one area is likely to increase the costs for those renting as you highlight in the consultation, along with the potential to move the problems that the council wishes to resolve to surrounding areas. Thus a more sophisticated approach to dealing with nuisance and rogue landlords would be more applicable in resolving the issues.
26. The use of Additional Licensing as a method to fund a shortage in funding by the council will create further problems for the council as money charged for licensing will only be allowed to be used for the administration of the licence not the general competence of enforcement. Thus the council will need to allocate additional funding to the enforcement and management issues that additional licencing will raise.
27. The increase in demand for privately rented accommodation, with a university within the council's boundary, along with the number of people living in the private rented sector post university study. This is coupled with those who cannot afford to purchase a house once they have moved out of the

family home and the changes to the welfare system will increase demand on the sector. Additional charges through licensing schemes will drive away good landlords and increase the cost of provision due to lack of supply.

28. The introduction of Additional Licencing alone will not resolve the issues that the Council wishes to address. The use of existing powers and working with landlords and other stakeholders to tackle the offending landlords and tenants is more likely to produce the desired outcome.
29. Again, the NLA would like to thank Bedford Council for the opportunity to respond to this consultation and hope you find our comments useful.



RESIDENTIAL LANDLORDS
ASSOCIATION

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Fax: 0845 665 1845
e-mail: info@ria.org.uk
Website: www.ria.org.uk

Your Ref:

Our Ref: 10/DB/39492/35 2183

Dated: 10th December 2012

Bedford Borough Council

By email to: ehadmin@bedford.gov.uk

Dear Sir,

Re: Bedford Borough Council – Proposed Additional Houses in Multiple Occupation (HMO) Licensing Scheme Consultation for Bedford Borough

I am writing on behalf of the Residential Landlords Association to make representations in response to the Council's proposal to designate a HMO additional licensing scheme for Bedford Borough. We object to the proposed designation. Our concerns are as follows:-

Procedure

1. We have significant concerns about the consultation procedure adopted by the Council. These are as follows:-
 - (1) Clearly the decision is predetermined and the Consultation is a charade. On page 32 of the full Consultation Document it clearly states "The Council plan to introduce this (i.e. additional licensing) from 1st April 2013 when it will become a legal requirement to apply for a licence". Thus, the decision is made in advance and no doubt anything stated in the Consultation will be ignored.
 - (2) The Consultation Document fails to address at all the key precondition laid down in the Housing Act 2004 for designating an area for additional licensing, namely that there is a problem or problems in the area to be designated relating to a significant number of HMOs (not subject to a mandatory licence) resulting from ineffective management on the part of private landlords (to paraphrase). There is no reference at all to this key question and clearly, therefore, the Council is not addressing these issues properly. Failure to understand the key question means that the Consultation is not framed in a proper way to meet the requirements laid down under the Act.
 - (3) Key elements of the proposal itself are lacking in detail and fail to cover important issues e.g. the costings of the scheme and the number of staff required to administer it.
 - (4) The consultation fails to address all of the statutory criteria.
 - (5) The evidence put forward in support is insufficient as a close examination demonstrates. It is exaggerated and does not in fact support the claims which are made. There is inadequate evidence to show that a significant number of properties are affected by these problems so as to justify the imposition of licensing.

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Affiliated to
THE BRITISH
PROPERTY FEDERATION

Residential Landlords Association Ltd
A Company Limited by Guarantee.
Company Registered in
England & Wales No. 2880179

- (6) Likewise, there is a lack of linkage to claims of a failure to act on the part of landlords.
- (7) The proposal extends to the whole of the Borough where there is not a scintilla of evidence of any problems in large parts of the Borough.

The Council's Arguments

2(1) Supposed evidence

Although, as indicated above, the Consultation fails to address the key issue of the existence of HMOs linked to the private sector and failure to manage there are claims in the Consultation Paper relating to various matters which could amount to such problems, although, having said that, the evidence is thin, to say the least. For many parts of the Borough it is non-existent. In this section we examine the evidence such as it is. Insofar as this issue is addressed at all in the Consultation it focuses on the built up area of the Borough and in particular in the inner urban areas of Bedford.

It is important to say at the outset that whilst the Scheme may be regarded as a key element of the Council's housing strategy additional HMO licensing is not necessary for the improvement of standards in such accommodation, as this can be achieved by other means. Instead, what the Council are trying to achieve, wrongly, is a local registration scheme for landlords of HMO accommodation in the Borough; not using licensing to tackle identified problems which are of such seriousness to merit the use of additional HMO licensing powers.

It is said that there is a need to reduce anti social behaviour and improve fire safety which underpins the aim to improve the level of broad compliance for HMOs within the Borough. However, no evidence is produced of particular problems with regard to fire safety and such evidence as is introduced in relation to anti social behaviour does not provide the required evidence that this is due to problems associated with HMOs which is in turn linked to ineffective management.

Any evidence put forward does not in any way demonstrate that a significant number of HMOs within the Borough as a whole are affected by problems due to lack of management by private sector landlords. No explanation is given as to how these measures will move towards bringing empty homes back into use. It is not explained how licensing will form part of the strategy to bring the empty properties back into use within the Borough. Levels of non-decent stock in the Borough are acknowledged to be substantially lower than the national average. It is only suggested in reality that the issues which may occur are within the inner area so why impose additional licensing throughout the Borough? This demonstrates our contention that this is a backdoor landlord registration scheme.

(2) Anti Social Behaviour

There is an acknowledgment that anti social behaviour can be associated with poor management in HMOs. This is a generalised supposition; not evidence. There is then an assertion of rising crime figures but, importantly, all of these apply in an inner urban area, i.e. the town centre, where these can just as well result from people having a night out and getting drunk, as being due to problems associated with HMOs. There is no shred of evidence produced linking anti social behaviour with poor management of HMOs. There is reference to "a perception" but since when have perceptions of this kind been evidence? There is also a claim that there is a growing body of evidence to show that poorly managed private rented properties are having a negative effect on the neighbourhood. In reality there is absolutely no evidence of linkage with HMO accommodation as this is the town centre. All that has been done is to download some information from the Police UK website and absolutely no analysis of these incidents. In any event Bedford only ranks third listed. These problems are no doubt due to the usual problems associated with a Town Centre.

The linkage to the density of HMO properties is ludicrous. No doubt an analysis of the density of public houses and clubs would also show that, not surprisingly, there were more in the urban area of the Borough, i.e. the town centre, than elsewhere in the Borough. Indeed, the author of the Consultation Document concedes "It is not, therefore, unreasonable to expect elevated areas of ASB given the increased usage experienced", i.e. usage of all the usual activities you would expect in a town centre. No evidence whatsoever is provided in relation to HMO accommodation and the higher incidence is easily explained for other reasons unconnected with the presence of HMO accommodation.

To bolster this thoroughly weak case we then have figure 5 why not do the same exercise for pubs and clubs? Perhaps the solution to the problem would be to tackle binge drinking; not impose costly and bureaucratic and additional HMO licensing.

Bluntly, the supposed case relying on anti social behaviour would be "laughed out of Court". Tables 3 and 4 indeed make the point because there is no correlation between the numbers of HMOs and the number of ASB incidents. If there was the inhabitants of the one HMO in Goldington Ward would be very busy people causing 225 anti social behaviour incidents whereas in Harper Ward there are 74 HMOs but only 239 incidents reported. These Tables prove absolutely nothing and clearly the author of the report had given up by then in that no conclusions are drawn anyway.

There is then an attempt to link the Castle Ward with anti social behaviour but again there is no analysis of the various incidents so this is meaningless. The best that can be done is the claim "there is a broad correlation between the highest density areas of HMOs and those areas where high levels of ASB are observed" but so what? As already pointed out these are explained by other

factors such as the presence of pubs and clubs not linked to the presence of HMOs.

(3) Service request/complaints

Here in more detail is given when one digs down into the numbers an analysis shows that both in absolute terms as well as in terms of proportion the numbers/complaints/service requests linked with HMOs is low and most certainly does not give evidence of problems associated with a significant number of HMOs. The total number of HMO service requests and complaints is 131. This will include those relating to mandatory licensable HMOs. Put into context it is less than three a week. This is based on an estimated 1500 HMOs of all types but in the Borough as a whole. When it comes to rubbish we have only 10 rubbish complaints from known HMOs and although there is reference to 69 in HMO hot spot areas all relate to such wide geographical areas again there is no evidence to suggest that of these 69 a significant number may have nothing to do with HMO accommodation. No doubt, in the Goldington Ward the occupants of our one HMO property has been extremely busy people in generating such a huge number of complaints as well as causing all the anti social behaviour in the area!

When it comes to noise nuisance we only have 60 complaints from known HMOs out of a total of 525, i.e. around 11.5% when around 12.23% of the private rented sector in Bedford are HMOs so, again, the level of complaints is in line with the proportion of HMOs in the private rented sector overall.

None of this is evidence of problems as required by the Act.

(4) Fire Safety

The case here as put forward is non existent. We start off with the old chestnut of supposedly 8 times more fire deaths in HMO accommodation is a grossly exaggerated figure which has long since been shown to be a myth. We then have Table 7 based on the fire statistics in Great Britain which is an overall Table for the country itself; having nothing to do with Bedford specifically. Despite this being a key justification for the case not a shred of evidence is produced relating to Bedford or any particular problems regarding HMOs in Bedford.

Student population/University

3. Such case as the Council has is undermined by the pleasing statement that the University's accreditation scheme has worked very well for landlords and students with a stable pool of high quality student accommodation. No evidence of these problems there!

The impact on landlords and tenants

4. HMO licensing schemes are bureaucratic and expensive to implement and operate. A huge amount of staff, time and effort is simply tied up in the overall bureaucracy of the scheme itself. Such schemes actually divert attention away from dealing with the real problems which are tackling the small number of criminal landlords as well as mentoring those who are less well versed than they should be in property management. At the end of the day it is the compliant responsible landlord who has to pay for these schemes as well as the less compliant. This is why responsible landlords resent these kind of schemes so much. They play by the rules but they have to pay for the minority who fail to do so.
5. Importantly, however, it is not actually the landlords who pay for this. Proponents of these schemes think that it is the landlord who does pay but in reality, as with everything of this kind, the cost actually falls on the tenant. As with any "consumer" protection law the cost ends up being wrapped up in the price. In this case it is, therefore, reflected in the rents payable. This makes these areas less attractive to tenants because they have to pay more rent; not more attractive. They, therefore, also do a disservice to tenants. This is a high cost scheme which makes the issue even more important.

Proposed alternative

6. Unfortunately, the Council dismisses accreditation without adequately explaining why. We strongly believe that in the first instance, before even entertaining the notion of additional HMO licensing, the Council should look for a more imaginative way of promoting their idea of proactive enforcement. This is particularly important bearing in mind that after five years additional HMO licensing will go away anyway so one has to look to the future to put in place measures that will make sure that any improvements needed are maintained. What is really needed is some improved area management. The Council clearly has a good idea where the HMOs are located. Street by street property inspections can be carried out. HHSRS powers can be used to effect improvements, if voluntary co-operation will not work. This would have to be done under a licensing scheme in any event. Why not try it without a licensing scheme? We have already pointed out to you that so much time and effort is taken up with actually managing the scheme itself and that time would be far better spent "out on the street" looking at properties and making sure that any that are needed are brought up to standard. The reality is that there doubtless be a lower number of inspections carried out certainly in the earlier stages of the scheme because of the amount of time and effort which will need to be devoted to setting up the scheme and processing licence applications. There is reference to a "permit to operate" but no evidence is proffered as to whether under a mandatory HMO license there has been any need to reject applications on the grounds that the applicant is not a fit and proper person. In any case, to suggest that this is some kind of permit to operate is very much overstating the reality of the situation.
7. There is a belief that simply imposing additional regulation is a magic wand. This is most certainly not the case. We have detected a real lack of will, effort and resource in enforcing existing legislation. What then happens is that there are calls for more such as the proposed introduction of HMO licensing. Just

because there is more it does not actually mean it will work. Time and time again when we enquire we find local authorities can be found wanting. Our recent survey identified 100 pieces of legislation which contain over 400 measures already affecting the private rented sector. Piling on one more will not provide a solution.

8. One option which the Council could consider is the PEAL Project in Hull where rather than adopt selective licensing the Council introduced a scheme of self inspection by landlords who were trained for this purpose and who were supervised. Where landlords of properties did not co-operate then the Council itself carried out such inspections. The inspections were focused in two areas and resulted in significant improvements in those areas.
9. Importantly, we consider that there is no justification for the need for the kind of pro-active approach which is being suggested otherwise than in the inner urban areas. No evidence is brought forward for other areas. With a relatively confined geographical area, as the Council has a good knowledge of the area, a far more pro-active area based inspection regime for the inner urban areas would enable the Council to improve standards without the imposition of a costly licensing scheme.

Difficulties facing PRS landlords regarding anti social behaviour

10. Insofar as there are issues in relation to anti social behaviour affecting HMOs, by way of background dealing with anti social behaviour (ASB) such as noise poses considerable problems for PRS landlords. The mandatory approach will therefore not offer the solutions which is proponents wrongly believe that it will bring about. They can rely on Section 21 to evict but only after the first six months. Otherwise, we have to rely on a discretionary ground and it is notoriously difficult to make a Judge make an order on these discretionary grounds. PRS landlords are also faced by problems of gathering evidence and getting people to come to Court. Court action is a totally unrealistic approach in practice. What you fail to appreciate is that you, as one half of the State, i.e. the Council, are castigating PRS landlords for failure to take action but another arm of the State, the Legal Services Commission, then gives individual tenants practically unlimited funds to defend these claims based simply on denials from tenants saying that things never happened as alleged. To compound the situation win, lose or draw the landlord has to stand his own costs in this situation because not only does the State pay to defend the tenant but also says that the landlord cannot recover his costs of doing so from the tenant (or the Legal Services Commission which has backed the case) even if the landlord is wholly successful. Tenants who are guilty of ASB are, of course, wise to these things. It is not right to expect the landlords to monitor and police ASB on the part of their tenants in the ways you suggest.

Outcomes

11. The Council's objective is to use the five year licensing period to make bold improvements in the HMO stock. It is stated that there is a will to improve the level of broad compliance from 62% to 80% which is said to be comparable with HMOs which are already subject to mandatory HMO licensing. We have to compliment the Council in that, unlike many other

authorities introducing such schemes, it has set a broad and hopefully measurable objective for the scheme. However, the key point to make is targeted enforcement which can produce these improvements can be dealt with without licensing and instead carried out on a street by street basis through inspections and engaging with landlords. This can be backed up by encouraging accreditation of landlords. HHSRS powers are already more than adequate to deal with issues, coupled with the use where appropriate of HMO Management Regulations which of course apply anyway.

Resources and costs

12. There is no discussion of the resources which are needed to bring about the objective to which the Council aspires. Therefore, without identifying the required resources held how can costings be prepared for the scheme?
13. The absence of a proper costing scheme is a particular worry. A recent Supreme Court decision has reminded local authorities of their fiduciary duty to their Council Tax payers to properly cost out schemes. Without proper budgeting (and the Council have some experience of this from mandatory HMO licensing) how can it be said that no cost will fall on the Council Tax payer? Schemes of this kind often cost more than is originally thought and this is a very important consideration in these times of great financial stringency. Is this a worthwhile application of the Council's resources? Without having the proper estimates how can the Council properly determine whether this is an appropriate use of its powers?

Monitoring

14. Even though an outcome is specified there is no suggestion of any kind of effective monitoring for the success or otherwise of the schemes. The Council needs to put in place monitoring, agreeing with stakeholders, the various measures which will indicate whether or not the scheme is successful.

Making the PRS pay for its own enforcement costs

15. Underlying this proposal is the increasing tendency throughout the country to introduce a discretionary licensing scheme to try to bring in a fee income because of the current cut backs in public expenditure. This is why such schemes are resented so much by the compliant landlord. This disadvantage is not pointed out in the Consultation Paper and, in our view, should be an important factor why the Council tries the proposed alternative. Time and time again we receive complaints from our members who are responsible landlords that they having to fund schemes of this kind which are increasingly becoming job retention schemes for local authority staff otherwise threatened with redundancy. These are put forward like this scheme without the necessary justification or evidence. This cost of the scheme will be passed on one way or another to the tenants making this accommodation much more costly to rent. Of course, accommodation needs to be decent but HMOs have an increasingly important role in providing cheaper accommodation at times

when personal budgets are under great pressure. The Council seems to be paying absolutely no regard to this issue.

Fixing fees

16. In fixing fees the Council must consider likely costs and there is no evidence at all provided that this has been done. When fixing fees for licences the legislation requires the authority to take into account only the costs incurred in carrying out their licensing functions (and any irrecoverable costs in relation to resulting management orders); not in either case in relation to the exercise of HHSRS functions. These are a separate matter and the cost of the HHSRS function in respect of licensed properties cannot be charged to licence holders. It must fall on the Council's general funds. In relation to additional HMO licensing there is a duty for the Council to satisfy themselves within five years that there are no Part 1 functions which ought to be exercised. We are particularly concerned about this issue because, again, there are no proper costings especially as this is a key reason put forward to justify the scheme. Without a proper calculation of cost it is difficult to comment further on this aspect.

Section 257 HMOs

17. We are concerned at the intention of including Section 257 HMOs within the operation of the scheme. As the consultation paper acknowledges, it is very difficult to identify these because properties can easily move in or out of Section 257 depending on the number that happened to be rented out at any particular time. Thus, six months compliance is required but then because one less flat is rented out and becomes owner/occupied it means that the block is no longer a Section 257 HMO. We believe that a level of resource would be needed to identify these properties and it is therefore inappropriate to include them within the ambit of the scheme.

Control of ASB

18. We have already indicated the Association's concerns in relation to the powers of landlords to deal with ASB which is linked in in this case with the supposed noise issue. We believe that the expectations intended to be placed on landlords in these areas under this scheme go unreasonably beyond what can be expected of landlords with limited resources. This is a concern we have raised on a number of occasions with various local authorities. Taking legal proceedings other than in very exceptional circumstances would be an unreasonable expectation for the reasons we have already explained. Rather, in our view, the local authority itself which has far more extensive powers and resources should undertake this role.

Fee levels

19. As already indicated, we have concerns about the level of fees and the way in which the whole issue of fees is being approached. As we have already commented in the absence of any sort of calculation/breakdown it is extremely

difficult to comment on the proposed fee structure particularly in the absence of proper costings for the operation of the scheme. Please supply us with a full breakdown of how you have arrived at this figure.

20. The Amount which can be charged in this instance is dealt with under the EU Services Directive and makes it clear that the costs cannot exceed that reasonably relevant to the administration of the scheme itself. We have concerns about certain aspects of the Council's proposals as follows:-
- (1) The use of fees as a penalty is manifestly unlawful. The proposed penalty fee of £300 is intended to fine a landlord without due process of law and has nothing to do with the administration of the scheme.
 - (2) Likewise, the additional fees for late applications cannot be justified automatically as such because, again, they must relate to the consequent work involved due to the late application being received. It may cost the Council nothing.
 - (3) The additional fee of the application is incomplete is excessive and unreasonable. An additional fee depending on the work done may be justified and, again, it would otherwise be a contravention of the EU Services Directive.
 - (4) As to the discounts we would suggest these should be higher to recognise that a landlord who is a member of a landlord scheme or an accreditation scheme generally will operate to a higher level and therefore ought to receive greater recognition under the discounts contained within the scheme. We fully endorse the use of discounts in this way.

Fees for enforcement

21. We would draw your attention to the Westminster Sex Shop case regarding the setting of local authority fees. The costs of enforcing the scheme are not recoverable and therefore should not be included in the level of fees. However, without a proper calculation we cannot say what the impact of this would be.

Criteria for the designation of additional HMO licensing

22. Under Section 56 of the 2004 Act additional criteria laid down in relation to the designation of areas subject to additional HMO licensing and in this section, as with selective licensing, we analyse these criteria and comment upon their application in this instance. Failure to address these issues is of concern because it does not enable us to respond to these aspects in the Consultation:-
- (1) *The authority 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 both as regards combining licensing with other courses of action available to them as regards combining such licensing by other persons.*

Again the Council have failed to put forward proper proposals or adequately consider this aspect.

- (2) *The authority must not make a particular designation unless they have considered whether there are any other courses of action available to them of whatever nature that might provide an effective method of dealing with a problem or problems in question and they consider 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).*

Clearly, accreditation combined with an area management scheme of the kind suggested above is a far preferable alternative which ought to be kept fully considered. This coupled with use of other requisite powers is fully sufficient to deal with the issues referred to in the Consultation. Unfortunately accreditation is brushed aside.

Data Protection implications

23. There is reference to using other Department's records to locate HMO accommodation. Presumably, this will include Council Tax exemptions. We consider that this will be a contravention of the Data Protection Legislation in that information used for a specific purpose is being used for another purpose.
24. We have worries about using the scheme to publicise the existence of HMOs. It is well known in the criminal fraternity that young people often live in accommodation of kind and have higher value items such as I pads and mobile phones and computers etc which are attractive to thieves.

How will HMO licensing make a difference

25. At page 12 of the Consultation Paper this question is posed. We do not consider that licensing advances matters and certainly not in the way which the Council claim. Issues concerning properties being unsuitable/too small or presenting a serious hazard to health can be dealt with by the use of HHSRS powers.
26. The claim that the Council can refuse a licence is an exaggeration. Other arrangements can be made and the Council omits to refer to its obligation to make a management order in such a case, if no satisfactory alternative is forthcoming.
27. There is reference to the intensive enforcement work already undertaken but no explanation of what extra licensing will do to improve stock condition. At the end of the day this can only be done by property inspections and use of HHSRS powers so, again, to suggest that licensing really adds anything is, in our view, misleading.

Inspection levels

28. There is reference to only about 10% of the stock being inspected routinely. Clearly, the Council's strategy cannot work unless this level of inspections is radically increased. There is no mention of this factor; not any consideration of the resources which will be required. How many extra environmental health officers will have to be recruited and if they are coming from out of the area would they want to come for a time limited scheme anyway? If the Council are to achieve the objectives why has this particular issue not been addressed in the Consultation Paper?

The Exit Strategy

29. Rightly (and the Council is to be complimented on this) the Council have identified the need for an exit strategy. Schemes of this kind cannot last forever. Again, although the issue is talked of there is, unfortunately in our view, no link to accreditation. Surely the way forward would be to develop accreditation alongside the scheme if it is to be introduced but, in our view, preferably without the licensing element at all.

Proposed licence conditions

30. Firstly, we wish to make some general observations. As already pointed out elsewhere property condition should be addressed via HHSRS and not by assessing conditions. Secondly, general conditions must be tailored to specific issues relating to particular properties not imposed "willy nilly".

Comments on specific licence provisions

31. Condition 5 (prescribed standards) – There is insufficient specification of what exactly will be required since a number of the nationally prescribed conditions are in very general form. More detail is therefore required without which it is impossible to comment further.

Condition 6 (wash hand basins) – We consider that this requirement is completely unnecessary and inappropriate in shared accommodation and has been abandoned by other authorities. The amount of disruption and effort as well as cost required to retrofit such facility is excessive and disproportionate. In a shared house such facilities are far better provided on a communal basis. Bringing water into a bedroom is never a good idea. It simply increases the risk of overflows which can cause major damage to a property and greatly inconvenience other occupants.

Condition 10 (compliance with management regulations) – It is wholly inappropriate to impose this on a standardised basis as it is already a legal obligation where applicable to comply with these regulations. It is therefore introducing double jeopardy. It is established in law that it is inappropriate to add in a licence condition for something that is already a legal requirement anyway.

Conclusion

32. We would reiterate that we object to the scheme. Again we would strongly suggest that the Council looks at the alternatives outlined, i.e. a voluntary approach working with all stakeholders, including local residents linked with accreditation. The fact that the proposal is to extend the scheme to the whole of the Borough is of particular concern. The level of problems referred to do not in any way, in our view, justify the imposition of additional HMO licensing. The resulting bureaucratic procedures and costs would be totally dis-proportionate to the kind of issues referred to in the Consultation. We, therefore, ask the Council to reconsider its proposal.


Yours faithfully

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