

Agenda Item 7

For publication

Bedford Borough Council – Executive

Date - 13 February 2018

Report by - Portfolio Holder for Community Safety and Regulatory Services and the Chief Officer for Environment

Subject - Outcome of Review and Consultation for the extension of the Additional Houses in Multiple Occupation (HMO) Licensing Scheme

1. Executive Summary

This report seeks approval to renew the Additional HMO Licensing Scheme for Houses in Multiple Occupation for a further 5 years when the current scheme comes to an end on the 6 May 2018. The details of the scheme are defined in Part 2 of the Housing Act 2004. The proposed Scheme will cover the whole of the Borough and will require landlords of HMOs to apply for a property licence to ensure it meets current national and local standards in relation to fire safety, structure 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.

This report provides evidence (Appendices A to E) to support the local need for extending the scheme, a Borough wide consultation which took place between the 15 August 2017 to 18 December 2017 and a review of the existing Additional HMO Licensing Scheme was carried out as part of the evidential case. This is also in accordance with the Housing Act 2004, as the local housing authority must from time to time review the operation of any designation made by them. Therefore the review of the current Scheme (Appendix D) fulfils this responsibility and provides the Council with a progress report which will be used as a platform for considering the future/proposed scheme. The review also examines some of the concerns which were raised during the consultation and how they could be addressed. This includes a recommendation for the pricing structure, timescale for implementation and sanctioning of the scheme.

2. Recommendations

That the Executive consider, and if satisfied, agree to:

- (i) Approve the renewal of the Additional HMO Licensing Scheme (Option 2) for a further five years throughout the whole of the Council's area.**
- (ii) Accept the findings of the Review and Consultation of the Additional HMO Licensing Scheme (appendices A to E).**

- (iii) **Agree that the Chief Officer for Environment, 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

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 requirements in the private rented market. The current scheme has produced a great improvement in the level of broad compliance in the HMO housing sector from 62 to 85%, however there is still a proportion of properties that still do not meet the basic fire safety and management standards for tenants' homes. With a likely predicted increase in the need for this type of accommodation locally it is important that the Council intervene to prevent unscrupulous landlords taking advantage of the most vulnerable in society.

The public consultation showed that the majority of respondents agreed with the scheme with 65% in favour of private rented property licensing in general and 60% either strongly agreeing or agreeing with the Councils approach using the existing licensing scheme to tackle poorly managed properties in private rented accommodation. 74% of tenants were also in favour and pleasingly 71% of local landlords were also in favour of private rented property licensing in general. The Council's partners and other stakeholders, such as Bedford Fire and Rescue service were wholeheartedly in favour of the scheme.

The balance of evidence published in the consultation document and the review shows that although there has been a significant improvement in many existing HMOs, conditions still do need to be improved in a proportion of HMOs in a structured and proactive way, especially for those who still remain unlicensed. This along with the support from tenants and residents for the scheme, support the decision to proceed with the scheme as appropriate and necessary.

Not adopting the renewal of the Additional HMO Licensing Scheme for a further 5 years across the whole of the Council's area is NOT recommended, as this will create uncertainty for tenants about the quality of the accommodation to be rented and the character of their landlord. This Council will NOT have a better understanding of the stock in the borough and will NOT be better placed to tackle compliance issues and rogue landlords who have been evading detection. Finally, legitimate landlords will NOT benefit from a level playing field, where currently their businesses are undercut by rogue landlords or agents failing to maintain their properties to the required standard.

4. Key Implications

(a) Policy

The Council's Corporate Plan 2017-2021 focusses on priority areas which will help ensure that Bedford Borough continues to be a place where people want to live, work and spend their leisure time. One of the priorities is "Bedford Borough is seen as the place to grow and has a good quality local Environment". This will be a perception of residents, business and partners, including those we are seeking to attract. The renewal of

the Additional Licensing Scheme for HMOs will have a positive impact on the borough in providing better quality of this type of accommodation to be rented and supports the delivery of this priority *“to be a place where people want to live, work and spend their leisure time”*.

The licensing proposals will also contribute towards the Councils Housing Strategy (2012-2020) and the Joint Strategic Needs Assessment (JSNA) by delivering improvements to neighbourhoods and building community resilience.

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 and sharing common amenities. The Government have now confirmed that their plans to extend Mandatory Licensing to smaller properties which are less than 3 storeys are likely to commence in April 2018. As the Council have historically already licenced most of these properties, in practice this means that the transition for existing landlords from Additional to Mandatory Licensing will be much simpler as they will have already brought their property up to the required statutory minimum standards. In total the Mandatory and Additional Licensing Schemes are estimated to bring approximately 800-900 HMOs within the two schemes.

(b) Legal Issues

Discretionary licensing schemes such as that being proposed previously had to be approved by the Secretary of State (SoS) for the Department for Communities and Local Government (DCLG); however under the Licensing of HMOs and Selective Licensing of Other Residential (England) General Approval 2015, the SoS for the DCLG gave local housing authorities a general consent to designate additional licensing schemes in their areas under section 56(1) of the Housing Act 2004. This consent requires a minimum of 10 weeks consultation for people affected by the scheme.

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 ineffectively’ to give rise to problems for occupants and 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.

Local Authorities also have to:

- Determine whether or not they meet the legislative requirements to continue to use the scheme.
- Review the scheme.
- Consult with 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 designation notice 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.

Failure to meet the statutory requirements may lead to challenge which could lead to 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.

(c) Resource Implications

The fees (Appendix C) have been set at a level that is reasonably expected will cover the costs of providing the service. They have been based on 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 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. The cost of an Additional HMO Licence has also been set at the same price as the Mandatory HMO Licence. This is because experience has shown that the amount of time it takes to administer and process the two types of licence are broadly the same and it will also harmonise the fees associated with local discretionary and national mandatory licensing schemes. For a 5 bedroom property this is calculated to be 0.68p per tenant per week throughout the 5 year period.

Based on the outcome of the consultation and the proposals contained within this report, it is estimated that this fee income should be achieved in line with the 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 of the scheme.

(d) Risk Implications

There is a risk that landlords in Bedford could object to the scheme and instigate a legal challenge. However, this would only succeed if the Council had failed to have regard to the legislation and follow the prescribed process. Historically Bedford Borough Council, through its Community Regulation Team, 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 s.56-60.
- The Licensing of HMOs and Selective Licensing of Other Residential (England) General Approval 2015
- The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 & 2007.
- DCLG: 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.

It is understood that a proportion of HMOs within Bedford Borough are estimated not to be broadly compliant in terms of fire safety measures and overall management standards including controlling Anti-Social Behaviour (ASB) and waste. The implication of this policy not going ahead is that tenants will be at risk of living in accommodation which is not adequately protected from fire. As there is likely to be an increase in demand for this

type of housing in the future, due to a reduction in the availability of mortgages, welfare reforms and demand being greater than the supply of Housing (indicated by an increase in rents). This could have a negative effect and increase the risk to householders, who are often the poorest in society using this sector of the market.

(e) Environmental Implications

There are no direct environmental implications arising from the contents of this report, however it will aid the Council's targeting of unsafe and overcrowded HMOs, along with the waste/refuse challenges that are associated with these properties such as overflowing bins and fly-tipping.

(f) Equalities Impact

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.

An equality impact assessment has been completed and is attached to this report in Appendix E as part of the Borough Council's statutory equality duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.

5. Details

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 estimated to be approximately 800-900 properties.

The Council currently operates a Mandatory HMO Licensing Scheme, where properties are 3 storeys or more, have 5 or more occupants living as separate households, and some shared amenities, as per the Housing Act 2004. This has been successful since its introduction in 2006 by protecting the public and driving up property standards in these particular premises, where often vulnerable members of the public live. Currently there are 92 Mandatory Licensed HMO premises within the Borough.

The Council also currently operates an Additional HMO Licensing Scheme using the same principles as the Mandatory Scheme, however this discretionary scheme targets higher risk housing that is not classified as mandatory licensable due to its size, layout or conversion quality, but is nonetheless higher risk in terms of fire safety and management standards. The current Additional HMO Licensing Scheme has been introduced in May 2012 requiring landlords to invest in making them safer and improve the state of repair, thereby leaving a positive legacy for the future. Currently there are 700 Additional HMO Licenced properties within the Borough.

The Council believes that property standards and safety would be improved if the licensing was extended for a further 5 years to tackle the proportion of HMOs that continue to operate illegally without a licence, often exhibiting the poorest standards of compliance with legal duties required thereby putting the health of tenants at risk.

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, will continue to be licenced. 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.

Other property types that will 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

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 and deposit protection all matters which good landlords already undertake. The same principles that have adopted under the mandatory licensing regime will continue to apply to all landlords of HMOs for additional licensing.

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 and means of escape.

The aim of renewing the scheme will be to continue to raise sector standards for landlords who want to do the right thing and comply with the governing legislation, whilst enforcing 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.

In a similar way to the Mandatory Licensing scheme one of the requirements of the 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 the property meets the definition of an HMO and that it is suitable for occupation, subject to it meeting certain conditions and prescribed standards taken from national legislation and guidance.

For HMOs that are already compliant and where there have been no material changes to the property, landlords will need to apply for a renewal to their licence. These properties will receive a lighter touch, so long as standards are maintained and there is no increase in risk at the property. This will allow Officers to focus their attention on inspecting the higher risk and unlicensed HMOs to tackle the rogue landlords in the sector. If however, it comes to light

that standards have not been maintained in these properties (for example through spot checks or intelligence from complaints) then the penalties for non-compliance will be more severe including the use of civil penalties under the Housing and Planning Act 2016.

The focus on risk will relate to fire safety, gas and electrical safety as well as good management practices, good shared facilities and rooms that are sufficiently spacious to avoid overcrowding. Consideration will also be given to proper provision for waste collection and controlling Anti-Social Behaviour (ASB) arising from the property.

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 continue to tackle the problems associated with this sector of housing within the private rented market in Bedford Borough. 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.

Public Consultation

A wide ranging consultation exercise was undertaken in two phases. The first phase commenced on 15 August 2017 seeking the views of the Citizens Panel. The second phase involved the formal public consultation in line with DCLG guidance and was launched on the 9 October 2017 and continued for 10 weeks until the 18 December 2017. The consultation was publicised in a number of ways using press releases, adverts in a local newspapers, Twitter, 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, Council offices and was available online.

The same information was also given to landlords, letting agents and managing agents, accredited landlords, the National Landlords Association (NLA), Residential Landlords Association (RLA) and the University of Bedfordshire. Information was presented on 23 November 2017 at the Bedford Borough Landlords Forum which met in the Council's Committee Suite at Borough Hall where approximately 30-40 landlords and letting agents attended.

Email consultation was also sent to over 500 known local landlords with a copy of the consultation document and a link to the website for completion of the electronic consultation questionnaire. Email consultation was also sent to approximately 30 local community groups and partners of Bedford Borough Council.

A survey of 135 tenants was also undertaken from the service held database and two days of face to face interviews were carried out with visitors to the Customer Contact Centre by Officers. Information was also provided to partners including Bedfordshire Pilgrims Housing Association, Bedfordshire Police, the Bedfordshire and Luton Fire and Rescue Authority, Shelter, neighbouring local authorities and NHS Bedfordshire.

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 and B).

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 (i.e. HMOs). The key findings have been detailed below, with the complete responses in the appendices following this report:

Overall 65% of all respondents agreed with the Councils approach to HMO licensing with 74% of tenants and 71% of landlords in favour. 58% also either strongly agreed or agreed with the Councils approach to tackling issues associated with poorly managed properties through the existing property licensing scheme. 69% of all respondents also wanted to see a public register of licenced properties on line for their local area, with 64% of landlords and 80% of tenants agreeing to this proposal. Amongst landlords there were concerns about the cost of the licence over the 5 year period which have been fully considered in Appendix B.

Outline of the proposals for renewing the Additional Licensing Scheme

The key high level proposals for the renewal of the Additional HMO Licensing Scheme which the Council consulted upon during August to December 2017 included:

- A Borough wide designation with defined licence conditions based on existing Council standards.
- A fee structure of £593.30 plus £59 per letting room for each HMO property which will last for a period of 5 years (this is in line with the Mandatory Licence fee which is the same cost). Additional charges for late and incomplete applications included £100. For a 5 bedroom property the extra cost is calculated to be an extra 0.68p per tenant per week throughout the 5 year period.
- A scheme to incorporate all HMOs defined under the Housing Act 2004 including s257 HMOs (older flat conversions).
- A timescale for implementation starting on the 17 May 2018 and lasting for 5 years until 2023.
- The scheme will also be reviewed within the five year period to determine whether it has met its objectives.

Other options identified during the consultation

During the consultation a variety of comments were received from those stakeholders responding to the consultation questionnaire regarding the four options presented which are outlined in the table below. All comments have been summarised and provided in Appendix C which follows this report. A number of other substantive comments were also made during the consultation, the key topics have been detailed in the table below:

- Option 1: Statutory action only
- Option 2: Renewal of the Additional Licensing Scheme across
- Option 3: A new Selective Licensing Scheme for a smaller area of the Borough.
- Option 4: Additional licensing scheme limited to urban wards only

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
1.	Statutory Action Only	The cost of administering the 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.
2.	Renewal of the Additional Licensing Scheme across the Borough	It fully meets the statutory objectives of the Council and targets the highest risk properties.	Landlords are concerned about the cost of the licence but this has been estimated for a 5 bedroomed HMO to be <u>0.68p per week per tenant over the 5 year period.</u>
3.	A new Selective Licensing Scheme for a smaller area of the Borough	Focuses on problem areas and includes all private rented property not just HMOs.	Sets up an inconsistency and different standards for landlords across the Borough. Excludes potential bad properties based on area and not risk. May lead to a migration of HMOs into the non-regulated area to avoid regulation. Domestic family homes which are rented would need to be licenced which are not higher risk unlike HMOs.
4.	Additional licensing limited to urban wards only	Focuses on problem areas and therefore easier to administer as it involves much fewer HMO properties.	This sets up an inconsistency across the Borough and may lead to a migration of HMOs into the non-regulated areas.
Substantive Comments		Advantages	Disadvantages
	An online register or licenced landlords.	Enables the good landlords to promote their properties in the market.	Too much detail could be seen as intrusive by landlords or subject them to unwanted attention including junk mail or spam.
	A reduced licence fee.	Landlords would be supportive of this and be more willing to take part in the scheme.	The income generated will not fund the administration of the scheme. Council tax payers would, therefore, be subsidising the scheme and this may be seen as unfair.

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

- Approve Option 2: The Renewal of the Additional HMO Licensing Scheme to cover the whole of the Borough – 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 and be better focussed on risk.
- Continue to enforce against the non-compliant landlords to ensure that they do not operate at the expense of the compliant landlords who are already licenced.
- Designate the whole of the Borough rather than a smaller area or inner urban area to avoid creating an inconsistent approach for different landlords within the Borough.
- Publish an online register for licenced landlords to promote those compliant landlords operating within the market.

6. Summary of Consultations and Outcome

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

Portfolio Holder for Community Safety & Regulatory Services

Management Team

Legal Services

Housing Options

Supporting People

Housing Strategy

Town & Parish Councils

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

7. Ward Councillor Views

The proposed Scheme will be delivered across Bedford Borough

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File Reference:	BBC_Add_HMO_Lic_2018-23
Previous Relevant Minutes:	<u>23/01/2013 – Executive</u> , Item 6, Outcome of Consultation and Introduction of Additional HMO Licensing Scheme
Background Papers:	None
Appendices:	<u>Appendix A</u> – Full results of the public consultation <u>Appendix B</u> – Substantive views of stakeholders and the Councils response <u>Appendix C</u> – Pricing structure <u>Appendix D</u> – Review of the Additional HMO Licensing Scheme 2013 to 2017 <u>Appendix E</u> – Equality Impact Assessment