

16 January 2019		ITEM: 14
Decision: 110499		
Cabinet		
Additional Licensing of Houses in Multiple Occupation		
Wards and communities affected: See section 4	Key Decision: Key	
Report of: Councillor Barry Johnson, Portfolio Holder for Housing		
Accountable Assistant Director: Carol Hinvest, Assistant Director of Housing		
Accountable Director: Roger Harris, Corporate Director, Adults, Housing and Health		
This report is Public		

Executive Summary

This report sets out the Council's approach to deal with small houses of multiple occupation [HMO] let to three and four tenants in the borough. The private rented sector has some problems of management standards and living conditions for which licensing has been seen to be required.

The Housing Act 2004 provides local authorities with discretionary powers to designate areas within its district for additional licensing in respect of some or all of the HMOs in its area that are not subject to mandatory licensing.

A licensing scheme is needed to improve the supply of HMOs within the private rented sector to improve neighbourhoods and make it a safe housing choice for residents unable to access the Council's housing register.

This report provides the justification and recommends implementing a designated additional HMO licensing scheme in the borough.

1. Recommendation(s)

- 1.1 To approve the implementation of an Additional Licensing Scheme for Houses in Multiple Occupation in designated areas within the borough as set out in section 4.**
- 1.2 That the evidence needed to support the introduction of additional licensing is justified.**

- 1.3 That all Houses of Multiple Occupation [HMO] except section 257 HMOs and those that are subject to mandatory licensing in Thurrock are subject to additional licensing.**
- 1.4 That the designation map comes into force on 1 May 2019 and lasts for a period of 5 years, see appendix 1.**
- 1.5 That the legislative requirements the Council has to take for a designated area has been carried out to support the implementation of the scheme.**
- 1.6 That additional licensing is consistent with the Council's Housing Strategy 2015/20.**

2. Introduction and Background

- 2.1 On 13 December 2016, the Housing Overview & Scrutiny Committee supported the proposal for the Council to explore the option of Additional Licensing scheme. The council has tested its appropriateness in Thurrock and feel this new scheme will be more effective because it will cover far more Houses of Multiple Occupation [HMO] than the Government's new mandatory scheme that came in force on 1 October 2018.
- 2.2 A licensable HMO under the Government's extended mandatory scheme is:
 - i. A private rented property occupied by 5 or more occupiers living in two or more households and share amenities such as kitchen, bathroom or toilet.
- 2.3 The Council operates the mandatory licensing scheme as required under the Housing Act 2004. Currently, on its public register it has 21 licensed HMO's with another 72 applications pending to be processed under the new extended mandatory scheme.
- 2.4 However, a House in Multiple Occupation (HMO) not subject to mandatory licensing is:-
 - i. A privately rented property which is let to three or more tenants who form two or more households and who share a kitchen, bathroom or toilet. However, HMOs of this description are not subject to mandatory licensing.
 - ii. A building which is converted entirely into self-contained flats, if the conversion did not meet the standards of the 1991 Building Regulations and more than one third of the flats are let on short term tenancies. These properties are otherwise known as section 257 HMOs.
- 2.5 Thurrock has around 700 HMOs not subject to mandatory licensing in certain parts of the borough. This is a high number of difficult to manage properties concentrated within certain wards of the borough.

- 2.6 The Private Sector Housing Service has concluded that there is sufficient evidence of poor management and living conditions in unlicensed HMOs, with landlords who do not proactively manage their properties, nor address the unacceptable behaviour of their tenants, to demonstrate a significant proportion of HMOs are being managed sufficiently ineffectively to justify additional licensing.
- 2.7 Work carried out by the Private Sector Housing Service has also confirmed that licensing is a viable option for tackling HMOs let to three or four tenants and that a scheme covering certain parts of the borough is justified. As licensing of HMOs assists in tackling the problems of risk to safety and health of the occupants, particularly in relation to injury from fire, overcrowding or lack of amenities.
- 2.8 Section 56 of the Housing Act 2004 gives powers to local authorities to designate areas or the whole of the area, within their district as subject to additional licensing in respect of some or all of the HMOs in its area that are not already subject to mandatory licensing. A scheme does not control the numbers of HMOs but puts in place suitable controls over those that already exist or may be created during the period covered by the scheme.
- 2.9 Although Secretary of State approval is not necessary for the council to adopt a scheme it does have to properly evidence the need and comply with legislative requirements, such as conducting a consultation with those affected. On 18 December 2018, the Housing and Overview and Scrutiny Committee reviewed the Council's public consultation exercise carried out over 11 weeks and it's response to ensure that the required legislative steps were carried out for supporting the introduction of a designated scheme. The Housing Overview and Scrutiny Committee supported the introduction of the scheme.
- 2.10 The proposed additional licensing scheme is to run alongside the mandatory HMO licensing scheme. Unlike the mandatory licensing scheme, the proposed additional licensing scheme lasts for a period of five years before the council must review its continued justification in order to readopt it.
- 2.11 HMO landlords covered in the additional licensing scheme must pay the Council a licence fee to rent out their property. The Private Sector Housing Service inspects all properties to ensure they are up to minimum housing standards, suitable for the number of occupiers and the team carries out a fit and proper test that the proposed license holder is suitable to be manager of the house before granting a license.

3. Issues, Options and Analysis

- 3.1 The justification to implement an Additional Licensing scheme recognises the poor management standards and associated problems affecting neighbourhoods within the borough.

3.2 The scheme is consistent with the Council's Housing Strategy 2015/20 to improve private rented accommodation. The Council has considered other options before introducing an additional HMO licensing scheme to effectively deal with this problem of HMOs not subject to mandatory licensing. These are the following:

3.3 **Do nothing and carrying on with extended mandatory HMO licensing**

The evidence file in Appendix 2 highlights the problem of small HMOs in the borough. The council regularly deal with HMOs let to three or four tenants managed in an unprofessional way including poor housing standards and living conditions. Also, they liaise with landlords about anti-social behaviour reports of their tenants causing nuisance in their neighbourhood. Mandatory HMO licensing will not tackle this problem but will continue to identify properties that require a license throughout the borough. Although, the implementation of extending mandatory licensing has covered a greater number of HMOs, it however makes up a small percentage of the overall HMO stock in the borough. Therefore, it will not tackle problems associated with small HMO accommodation housing three to four tenants that continue to cause problems.

3.4 **Continue to respond to complaints and carry out inspection and enforcement action**

Responding to complaints often involves coordinated investigation and enforcement action by a number of departments, using various pieces of legislation before a final resolution is obtained. Many tenants are not aware of the law and/or could be afraid of losing their tenancy so will not make a complaint to the Council. Unfortunately, a reactive inspection based programme is resource intensive and works on the assumption that compliance and improvement will normally require enforcement action following a period of extensive investigation to identify responsible owners.

3.5 **Continue to promote landlord accreditation**

Landlord accreditation is a voluntary scheme which recognises landlords who wish to be professional and act responsibly. This relies on the goodwill of landlords to enrol onto courses as it is not compulsory for landlords to become accredited. This is unlikely to have an impact on non-compliant landlords.

3.6 **Continue to offer advice and guidance through the Landlord Forum**

The Landlord Forum is an open forum for all Thurrock landlords for networking, providing advice and guidance, education and training. It is held twice a year but attendance is voluntary and usually attended by interested and professional landlords. This is unlikely to have an impact on non-compliant landlords whose HMOs are not subject to mandatory licensing.

3.7 The adoption of Article 4 Direction under the Town and Country Planning Acts Order 1995

This allows the Council, in exceptional circumstance, to use this legislation to remove permitted development rights in order to secure local amenity or the proper planning of an area.

The legislation would not help the Council meet the demand for affordable housing in Thurrock if it removed permitted development rights to change the use of a small property forming a single household into a HMO. The Private Housing Service wants to improve housing standards in the rented sector and support our private landlords to manage their properties better.

3.8 The adoption of an additional licensing scheme is the preferred scheme

The use of additional licensing is the best tool to tackle the worst type of HMO accommodation let to three or four tenants within the proposed area by targeting non-compliant landlords. Licensing allows the Council to use our powers to tackle offenders and actively focus resources on properties of concern. This improves the overall standard of properties for people who live alongside HMOs as licensing transfers the responsibility to individual's managing or having control to make an application and meet housing standards.

Additional Licensing would extend HMO licensing powers under the Housing Act 2004 to target HMOs within a concentrated area, based on ward boundaries. All of the above options would continue but licensing would act as the main enforcement tool to achieve the required improvements. The additional licensing and mandatory licensing scheme will run together to benefit all our residents if approved on 1 May 2019. Sections 56 to 80 of the Housing Act 2004 requires the council to publish a public notice notifying the scheme will come into force three months after the date of approval.

If the Council decides that an Additional Licensing scheme should not be introduced. The Council will to continue all of the above options and explore the approval steps for Selective Licensing.

4. Reasons for Recommendation

4.1 The evidence to support the introduction of designated scheme is set out in the Thurrock Additional Licensing Evidence File in Appendix 2. The following areas have been selected due to their high concentration of HMOs and wider problems requiring the intervention of council services and community safety partners.

- Grays Thurrock
- Grays Riverside
- Little Thurrock Blackshots

- Stifford Clays
- West Thurrock and South Stifford
- Ockendon
- Belhus
- Aveley and Uplands
- Tilbury Riverside and Thurrock Park
- Tilbury St Chads
- Chadwell St Mary

- 4.2 Additional licensing is consistent with the Council's Housing Strategy 2015-20 to improve management standards and housing conditions in the private rented accommodation.
- 4.3 Licensing will significantly assist the Council. It will ensure a more streamlined approach on services dealing with the same owner and property in relation to improving tenancy relations to prevent tenancy failure, challenge landlords to deal with their tenant's anti-social behaviour and stop illegal evictions with the Private Housing Service leading investigations and deciding the appropriate enforcement action relating to the property and owner.
- 4.4 The proposed licensing conditions in Appendix 3 have been developed to support the proper standards management and provision of effective tenancy arrangements in HMOs.
- 4.5 The council has adopted the Essex Amenities Standards in Appendix 4. These have been recently reviewed and developed to help ensure that HMOs of all types provide sufficient and adequate amenities and the room sizes in HMOs are sufficient to meet the welfare needs of the tenants.
- 4.6 The council's HMO license fees will administer the cost of the scheme over the 5 years. The Council cannot make a profit from the scheme. The costs and fees will be subject to annual review.
- 4.7 The legislative requirements in relation to consultation and representations has been carried out and considered before making a designation in the borough to support its implementation.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 Section 56[3] of the Housing Act 2004 requires that:

Before making a designation of an area subject to Additional Licensing the authority must

[a] take reasonable steps to consult persons who are likely to be affected by the designation and

[b] consider any representations made in accordance with the consultation and not withdrawn

5.2 The proposal has been presented to the Housing Overview and Scrutiny committee on 18 December 2018 to consider all the relevant issues to designate certain parts of the borough have been carried to the support the implementation of the scheme.

5.3 A wide ranging consultation programme was commenced on 9 July to 24 September 2018, a period of 11 weeks to obtain views of key stakeholders, including landlords, letting/managing agents, tenants, residents, businesses, stakeholder/representative in Thurrock, Barking and Dagenham, Basildon, Billericay & Wickford, Brentwood, Castle Point, Chelmsford, Rochford, Southend, Havering and Waltham Forest.

5.4 The results of the full consultation are available on the Council's public website.

5.5 The summary of the consultation results is as follows:

163 surveys were completed on line.

Overall 73% of respondents strongly supported the introduction of an Additional Licensing scheme. Over three quarters of respondents agreed that properties in the proposed licensing areas should be included within the scheme.

A very high percentage of respondents 83% and 82% respectively felt Additional Licensing would assist poor performing HMO landlords raise their standards and improve the health and safety of tenants living in HMOs.

95% of respondents believed ASB to be a problem in Thurrock. Residents living in the proposed licensing areas experience higher incidence of ASB where small HMOs not subject to mandatory licensing are located.

5.6 The table below provides a breakdown according to the type of respondent.

Respondent breakdown	No.
Providing your own personal response	90
Submitting a response on behalf of an organisation	4
Responding as a private landlord or a letting or managing agent	62
[No Response]	7

5.7 Of those who completed the survey 120 lived within Thurrock.

- 5.8 It is clear from the consultation results that 55% residents and 38% landlords who completed the survey supported the proposal of regulating small HMOs to raise standards.
- 5.9 The evidence base and the survey findings also showed many residents living within Thurrock do feel there are problems in the borough in relation to poorly managed HMO and private sector accommodation. The following neighbourhood issues had the highest response rate as problems for residents in Thurrock.

Neighbourhood Problems	No. of respondents
Waste	155
Anti-Social Behaviour	154
Crime	154
Migration	154
Litter	153
Abandoned vehicles	151

- 5.10 The Residential Landlord Association raised some questions about the proposal. All of these questions have been answered in a formal response from the council. None of the issues that were raised we felt were substantial enough to cause any concern or for changes to the proposal to be made.

6. Impact on corporate policies, priorities, performance and community impact

- 6.1 Licensing will improve the health and wellbeing of private tenants through the reduction of poor and unsafe housing conditions and will enable the authority to bring about general improvements in the neighbourhoods where licencing takes place.

7. Implications

7.1 Financial

Implications verified by: **Julie Curtis**
HRA and Development Accountant

Based on the HMO licence fee of £950 and the estimated number of small HMOs in the area the theoretical General Fund income could be up to £665k over 5 years. Staffing costs will have to be considered to administer the Additional Licensing scheme. The total cost of operating the scheme will be self-financed through the fee income over the 5 years.

Section 63[3] of the Housing Act 2004 provides that license applications may be accompanied by a fee to be determined by the local housing authority [LHA]. In setting its fee LHA may take into account all costs it's incurred in

carrying out its licensing function which we have done for licence applications for up to a 5 year period. The costs, fees and discounts are subject to review annually.

All income generated through the licencing scheme is ring-fenced to administer the scheme and improve the HMO offer in the Borough.

7.2 Legal

Implications verified by: **Chima Obichkwu**
Housing Solicitor

Part 2 of the Housing Act 2004 provides for the licensing of HMOs. The Act imposes a statutory duty on local authorities to license privately rented HMOs that are occupied by 5 more persons forms two or more households where there is sharing of basic amenities. The Council however has discretion to extend that that licensing to other HMOs. In making that decision the Council must:

- i. Consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
- ii. Consider whether there are other course of action available to them [of whatever the nature] that might provide an effective method of dealing with the problem or problems in question.
- iii. Consider that making the designation will significantly assist them to deal with the problem or problems [whether or not they take any other course of action as well]
- iv. Consider people are likely to be affected by the designation
- v. Ensure that the exercise is consistent with the overall housing strategy; and seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty homes and anti-social behaviour affecting the private rented sector as regards combing licensing with other action taken by them or others.
- vi. Be satisfied that the evidence relived on by the council is sufficiently robust to justify the designation

A Notice of Designation of an Area for Additional Licensing of Houses in Multiple Occupation has to be published in accordance with Section 56 to 60 of the Housing Act 2004 and Regulation 9 of the Licensing and Management of Houses in Multiple Occupation and Other Houses [Miscellaneous Provisions] [England] Regulation 2006. Should the council approve the proposed scheme it will come into force 3 months after the date of approval. This will be 1 May 2019.

In terms of enforcement action, under section 95 of the Housing Act 2004, it is offence under section 5 of the Act not to licence a property which is licensable.

7.3 Diversity and Equality

Implications verified by: **Rebecca Price**
Community Development Officer

The Community and Equality Impact Assessment was carried out as part of the review of the scheme. Licensing raises HMO standards. This scheme will improve standards for tenants in HMOs regardless of whether they belong to a protected group[s] or not.

The Council addresses community and tenant concerns of, overcrowding, safety, security, and improving management and maintenance in the private rented sector.

The proposed additional licensing scheme therefore has a positive effect on a wide range of residents in HMOs. It allows the Council to remedy poor conditions in the private rented sector that can have an adverse effect on health in general and can exacerbate medical conditions. The Council can take the appropriate action required under mandatory and additional licensing.

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

The Council has forecast around 700 properties in the borough could require a licence therefore staffing implications have been considered to manage this scheme.

The income generated from licensing will finance the staff to administer the scheme as all licensing income is ring fenced as per the regulatory guidance on HMO fees.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Consultation update on the housing option of Additional Licensing scheme, 18 December 2018
- Implementation of Mandatory Licensing of Houses in Multiple Occupation and the introduction of an Additional Licensing scheme, 10 July 2018

- Update on HMO Licensing Fee Consultation and the Proposal of Additional Licensing, 13 December 2016

9. Appendices to the report

- Appendix 1: Designated map
- Appendix 2: Thurrock Additional Licensing Evidence file
- Appendix 3: Proposed license conditions
- Appendix 4: Essex Amenity Standards for Houses in Multiple Occupation

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