

HOUSING CABINET MEMBER MEETING

Agenda Item 90

Brighton & Hove City Council

Subject:	Housing Act 2004 – Houses in Multiple Occupation Licensing Fees and Additional Licensing		
Date of Meeting:	1 December 2010		
Report of:	Lead Commissioner Housing		
Contact Officer:	Name:	Martin Reid	Tel: 29-3321
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Key Decision:	No		
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 On 6 April 2006 national licensing for certain categories of Houses in Multiple Occupation (HMOs) came into effect as required by the Housing Act 2004 (The Act). Since then there have been nationally prescribed criteria that describe which HMOs must be licensed, plus the provision for local housing authorities to pursue additional licensing areas – defined geographically and/or by HMO type – if appropriate.
- 1.2 Fees for different categories of licensable HMO were agreed by Housing Committee on 30 March 2006 and were set, in accordance with Government guidance, at a figure which would be self-financing for the council, having regard to resources needed to process applications and issue licences.
- 1.3 Fees were set for an initial licence that would be granted for up to five years. These fees have not been reviewed since and from April 2011 routine reapplications will become necessary as initial licences expire.
- 1.4 The Student Housing Strategy, adopted in November 2009, is part of the overarching city-wide Housing Strategy 2009 – 2014. The goal of the Housing Strategy is to work to ensure student housing provides a positive contribution to students' lives and the city. The Student Housing Strategy considers residential geographies of students in the city, identifies issues arising and areas where over-concentration of student households occur and includes consideration of the implementation of additional licensing among its action points.
- 1.5 This report reviews HMO licensing fees and considers additional HMO licensing, seeking approval for: -
 - the introduction of a re-licensing fee
 - an increase to initial application fees to reflect increased costs since 2005/6 and

- consultation on whether additional licensing might be appropriate in Brighton & Hove

2. RECOMMENDATIONS:

- 2.1 That the Cabinet Member for Housing approves revised fees, as outlined in this report, for initial HMO licence applications and the introduction of new fees to apply to applications to renew a licence that has expired.
- 2.2 That the Cabinet Member for Housing approves that a landlord making more than one initial or renewal application in any financial year should receive a reduction of £24 for each application other than the first one.
- 2.3 That the Cabinet Member for Housing approves initiation of a 12 week consultation on additional HMO licensing of HMOs of two or more storeys and three or more occupiers in the wards of Hanover and Elm Grove, Moulsecoomb and Bevendean and St Peters and North Laine, the wards with the highest concentrations of smaller HMOs, including student HMOs, as identified in the Student Housing Strategy action plan.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Act requires re-licensing of HMOs that have already been licensed when the licence period has expired or if the ownership changes. 546 mandatory licensing applications were received in 2006/7 – about 65% of the total applications received since HMO licensing began. The licences issued in respect of these will all expire in 2011/12. New applications will have to be made and processed in 2011/12 for all of those properties that are still licensable HMOs.
- 3.2 It is illegal to operate licensable HMOs without a licence.
- 3.3 A licence or renewal of licence can be granted for a maximum period of five years.
- 3.4 The Government's advice is that HMO licensing schemes should be self-financing. There should be no element of profit and any shortfall would have to be subsidised through revenue budgets.
- 3.5 The re-licensing process reflected in the proposed fees includes:
 - Checking and processing applications;
 - Re-inspection to check standards;
 - Monitoring of the condition of the HMO involved;
 - Issuing the licence documents and maintaining a public register.
 - Continuing development of licence procedures.

- Continuing development of the IT package;
- 3.6 The setting of the renewal fees has been achieved with reference to the principles set out in guidance and recommendation on the justification, calculation and structuring of HMO Licence Fees produced on behalf of the East and West Sussex Chief Environmental Health Officers by an independent consultant in October 2005.
- 3.7 HMOs which currently have to be licensed are those which are three or more storeys in height and have five or more occupants from two or more households. About 800 full HMO licences have been issued to date with about 40 more applications currently at draft licence stage.
- 3.8 A property that is being re-licensed will have been inspected before. The officer time required is less than that required to process an initial application and this is reflected in the proposed fees below. In para 3.9 below the prices in brackets are the initial licensing fee corresponding to the proposed re-licensing fee.
- 3.9 The proposed renewal fee for a shared house with five occupants, **based on 2006 prices**, would be £320 (£640). Additional occupants above five would be charged at a rate of £5 per person (£10). The renewal fee proposed for a bedsit or mixed use property would be £320 for the first bedsit (£640) plus an extra £20 for each additional bedsit (£40). For hostels the renewal fee proposed would be £320 for five occupants (£640), increasing by £5 for each additional occupier (£10).
- 3.10 It is proposed that landlords with multiple properties should be allowed a reduction of £20 per application, based on 2006 prices, for second and subsequent renewals in the same financial year in order not to charge where there is a duplication of information.
- 3.11 It is proposed that HMO licensing fees remain at £nil where the applicant is a registered charity.
- 3.12 As with the initial licence application fees, the proposed renewal fees are felt to be a reasonable reflection of average costs having regard to officer time, etc. For consistency, the fees in 3.9 and 3.10 were calculated based on January 2006 cost levels - see section 3.13 below for proposed inflationary increases.

Revision to reflect increased costs

- 3.13 Since 2005/6, salary costs and associated overheads have risen by just under 20%. To reflect government advice that HMO licensing should be cost-neutral it is proposed that fees be increased accordingly, rounded as follows:
- Initial fee for a shared house or hostel with five occupants – £760, with an additional fee of £12 for any additional occupant;
 - Relicensing fee for a shared house or hostel with five occupants – £380, with an additional fee of £6 for any additional occupant;

- Initial fee for a bedsit or mixed use property – £760 for the first bedsit plus an extra £48 for each additional bedsit. For example, for a five-bedsit HMO this would give an initial fee of £952;
- Relicensing fee for a bedsit or mixed use property – £380 for the first bedsit plus an extra £24 for each additional bedsit. For example, for a five-bedsit HMO this would give a relicensing fee of £476.

Information/Background – Additional HMO Licensing

- 3.14 The Act permits a local housing authority to designate additional licensing area(s) if occupiers of HMOs or members of the public are being caused problems due to sufficiently ineffective management. Such ‘areas’ can be defined geographically and/or by type of HMO.
- 3.15 Many HMOs in the city, especially smaller HMOs, are occupied by students. While recognising the many benefits that students bring to the city, and supporting the role of the private rented sector, and many excellent landlords, in providing accommodation for students the Student Housing Strategy 2009 – 2014 acknowledges the negative effects that can arise for local neighbourhoods and associated risk to community cohesion and social relations where over concentration of student households occur. In light of this the Student Housing Strategy includes in its action points a recommendation that the council considers the implementation of additional licensing schemes in the city, identifying areas which may be appropriate for additional licensing.
- 3.16 The Student Housing Strategy sets out a strategic approach for the supply and management of student housing in the city, to ensure that students are integrated into established residential communities in ways that do not unbalance local population structures and housing markets. In doing so, the strategy seeks to harness the many benefits of a large student population for the long-term health and well-being of the city, and engender mixed, cohesive and sustainable communities. The strategic goals of the student accommodation strategy:

Strategic Goal 1: to ensure effective management and support high-density student housing and populations within HMO-dominated studentified neighbourhoods, using an area-based approach

Strategic Goal 2: to reduce or halt over-concentrations of HMO across studentified neighbourhoods via the sustainable development of affordable and appropriately-designed, purpose-built student accommodation, which offers relative ease of access and proximity to place of study/campus

Strategic Goal 3: to work collaboratively to ensure effective management and support the impact(s) of high-density student populations within large purpose-built student accommodation on adjacent residential environs

Strategic Goal 4: monitor the effects of the movement of students into purpose-built student accommodation, and identify the signs of destudentification

Strategic Goal 1 - Action 4 is to ensure that non-licensed HMO is identified, and consider the possibility of additional licensing of HMOs in the city.

3.17 Before making an additional licensing designation a local housing authority must: -

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

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

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

Additional Licensing Considerations

- 3.19 Before any additional licensing designation(s), research would be necessary into what areas and HMO types might be appropriate for inclusion. It is proposed that the Student Housing Strategy provides the basis for this research.
- 3.20 Earlier this year, planning legislation was introduced to create a new use class (C4) covering small houses in multiple occupation. The intention was to give local planning authorities some control over such uses in areas where HMOs caused an adverse impact. Legislation introduced in April this year required developers to make a planning application if they wished to change the use of a single house (C3 use class) to a small HMO (C4). Revised legislation, which came into force on 1 October 2010, created a permitted development right (which has the effect of granting planning permission) allowing a change of use from a C3 use to a C4 use. A change of use from a C4 use to a C3 use has benefitted from a similar permitted development right since April. From 1 October, therefore, no planning application has been required to change the use of a single house (C3) to a small HMO (C4) or vice versa.
- 3.21 Local authorities can remove permitted development rights by use of an Article 4 direction. Justification is required for an Article 4 direction, such as adverse impact upon neighbours from a concentration of such uses, and they relate to a clearly defined geographical area. The Planning team is looking at options around considering whether such a direction relating to permitted development rights for HMOs would be appropriate in Brighton and Hove. To provide an initial evidence base a study is planned, starting in January 2011, aimed at identifying and mapping streets and areas with high concentrations of student and other HMOs.

4. CONSULTATION

- 4.1 Consultation on additional HMO licensing will take place following agreement in principle to the proposals. The statutory consultation period for additional licensing is 10 weeks but a 12 week period is proposed in line with the council's standard consultation protocol.

- 4.2 Information on the proposed new HMO licensing fees will be placed on the Brighton & Hove City Council website and made available to other departments, to the National Landlords Association, the Southern Landlords Association and Sussex and Brighton Universities.
- 4.3 The Student Housing Strategy was developed in close consultation with members of the Strategic Housing Partnership. The research undertaken in the formulation of the Student Housing Strategy involved focus groups and consultation with a range of stakeholders across the city. The Student Housing Strategy also built upon a number of University of Brighton and Sussex research projects which involved primary research with local community organisations and residents, and actors in the city, and analyses of student term-time addresses, census data and other datasets. In addition, the Strategic Housing Partnership undertook a cross referencing exercise to ensure the Student Housing Strategy encompassed recommendations arising from the Adult Social Care & Housing Scrutiny report on Students in the Community.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The proposed fees have been calculated on the basis of recovering the costs of the estimated officer time taken to process the applications. It is anticipated that there will be a large number of renewals in 2011/12 although it should be noted that as previously, the income will continue to be aligned over the period of the license (5years).

Finance Officer Consulted: Michelle Herrington Date: 19/11/10

Legal Implications:

- 5.2 Part II of the Housing Act 2004 provides a comprehensive framework for the licensing of Houses in Multiple Occupation. Section 56 gives local authorities the power to require the licensing of HMOs which are outside the mandatory licensing scheme by making a designation. The pre-conditions to the making of a designation are set out in paragraph 3.17 of the report. The 12 week consultation period proposed in recommendation 2.3 exceeds the minimum period provided for in the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Accommodation (England) General Approval 2010. Section 63 of the Act allows local housing authorities to require an application for an HMO licence to be accompanied by a fee fixed by the authority. This is not a general revenue raising power, but the Council is entitled in fixing the fee to take into account its costs incurred in carrying out the HMO licensing function. The proposed charges contained within this report have been formulated in accordance with the statutory provisions. The council must take the Human Rights Act into account in respect of its actions but it is not considered that any individual's Human Rights Act rights would be adversely affected by the recommendations in this report.

Equalities Implications:

- 5.3 There are no equalities implications arising directly from this report. The recommendations in this report have been developed as a part of the overall City-Wide Housing Strategy 2009 – 14: healthy homes, healthy lives, healthy city. An equality impact assessment has been carried out on the City-Wide Housing Strategy during its development.

Sustainability Implications:

- 5.4 There are no sustainability implications arising directly from this report. The recommendations in this report have been developed in line with the strategic approach set out in the Housing Strategy. In particular, the Student Housing Strategy sets out a strategic approach for the supply and management of student housing in the city, to ensure that students are integrated into established residential communities in ways that do not unbalance local population structures and housing markets. In doing so, the strategy seeks to harness the many benefits of a large student population for the long-term health and well-being of the city, and engender mixed, cohesive and sustainable communities.

Crime & Disorder Implications:

- 5.5 There are no crime and disorder implications arising directly from this report. The City-Wide Housing Strategy 2009 – 14: healthy homes, healthy lives, healthy city, of which proposals in this report form a part, recognises appropriate housing and support is essential in helping to reduce antisocial behaviour and other crime and also to support the victims of crime. Specific actions within the housing strategies recognise hate crime and aim to support victims and help develop safer communities.

Risk and Opportunity Management Implications:

- 5.6 There are no risk and opportunity management implications arising directly from this report. In relation to the Student Housing Strategy, key objectives include an area based approach to managing student housing to mitigate the negative effects of high density student populations on established communities while also continuing to support private sector landlords to supply high-quality student accommodation. Positive benefits from the powers of the Housing Act should improve the health and safety of housing for HMO residents in the City.

Corporate / Citywide Implications:

- 5.7 The proposals outlined in this report are related to housing related strategies that support the overarching Citywide Housing Strategy 2009-2014: healthy homes, healthy lives, healthy city.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 For HMO licensing fees the alternative options are to leave the fees unchanged, to increase them by less than inflationary rates or to increase them by more than inflationary rates. Leaving them unchanged or increasing by less than inflation is not considered appropriate as the shortfall in costs would fall to be subsidised by Council Tax payers. Increasing by more than inflation and/or failure to introduce a relicensing fee would result in a profit element, which would not be in accordance with government recommendations.
- 6.2 Alternative options for additional licensing are not to introduce it, to introduce it in more or less areas and to introduce it for a wider or narrower range of HMOs. The proposed areas have been chosen to reflect the greatest concentration of HMOs that are just below the mandatory licensing criteria, as identified in the Student Housing Strategy. It is considered that evidence does not support adding more areas at this time and taking areas away would not fully address relevant issues in areas where they are most prevalent. Introducing it for a wider range of HMOs is considered a disproportionate burden on property owners without evidence of issues to support such additional licensing. Introducing it for a narrower range would not address relevant issues.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The reasons for the report recommendations are outlined above in the report.

SUPPORTING DOCUMENTATION

Appendices:

1. None.

Documents In Members' Rooms

1. None.

Background Documents

1. Approval steps for additional and selective licensing designations in England, Department for Communities and Local Government, Revised edition February 2010
2. Student Housing Strategy 2009-2014