

Subject:	HMO Licensing Update: Response to letter from Councillor Farrow		
Date of Meeting:	19 June 2013		
Report of:	Executive Director, Environment, Housing & Development		
Contact Officer:	Name:	Martin Reid	Tel: 29-3321
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 Housing Committee on 16 January 2013 considered the following letter from Councillor Farrow to Councillor Wakefield:
Publicity was recently given to the London Borough of Newham's scheme to register all landlords in their local authority area. I would request that officers investigate and report back on this scheme and the feasibility of implementing a similar scheme in our City.
- 1.2 As requested by the Chair of Housing, this paper reports on the Newham scheme and on circumstances set out in the Housing Act where a local authority may consider establishing a Selective Licensing scheme or any further designation of Additional Licensing and the evidence needed to support this.
- 1.3 The Council currently license and / or have licence applications for 995 larger Houses in Multiple Occupation (HMOs) under the national mandatory licensing scheme applied city-wide.
- 1.4 Designation of an Additional Licensing scheme in the five Lewes Road wards commenced on 5 November 2012 following Housing Committee approval on 20 June 2012. Housing Committee approved the designation on the basis of extensive consultation and robust evidence that a significant proportion of the smaller HMOs in the five Lewes Road wards affected are being managed sufficiently ineffectively as to give rise to one or more particular problems either for those occupying the HMOs or for members of the public. As of 5 June 2013 the Council has received 1451 valid additional licence applications and checked and issued 926 draft and full licences.
- 1.5 The Housing Act sets out circumstances where a local authority may consider establishing a Selective Licensing scheme or designation of Additional Licensing and the evidence needed to support this. Introduction of any further additional HMO licensing would be subject to the same legal tests, extensive consultation and robust evidence base required to support the decision on the existing designation. Selective Licensing is a discretionary power to license all privately rented properties in a designated area that is deemed to suffer from low housing demand and/or significant and persistent antisocial behaviour. Before

considering designation of any further additional HMO licensing scheme or any Selective Licensing the Council would have to comply with specific requirements set out in the Housing Act in relation to extensive consultation, robust evidence base and resourcing any new scheme. Failure to do this would leave the Council at risk of Judicial Review.

2. RECOMMENDATIONS:

- 2.1 That Housing Committee note progress with implementation of the Additional Licensing scheme in the five Lewes Road wards since the commencement of designation on 5 November 2012.
- 2.2 That Housing Committee note the information on the Newham scheme and the legal parameters framing Additional Licensing and Selective Licensing schemes outlined in the report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Private Rented sector in Brighton & Hove

- 3.1 In recent years we have seen a growth in the private rented sector to 34,081 homes, 28% of all housing stock. The most recent census indicates that the number of private rented homes in the City has increased by 45.7% (an extra 10,691 homes). The City has the 9th largest private rented sector in England & Wales. The City has the 6th highest proportion of converted dwellings or shared houses (houses in multiple occupation and bedsits) in England & Wales.
- 3.2 The private rented sector is an important source of flexible housing supply in the City with a range of benefits including:
 - Catering for a highly mobile population;
 - Supporting university growth to the benefit of the local economy, labour market and cultural offer;
 - Helping to address housing need in the City;
 - Supporting investment in improving city housing stock;
 - Supporting direct and indirect employment, including in local trades and businesses.
- 3.3 However, the private rented sector does have some problems for which statutory regulation, particularly licensing is required. Houses in Multiple Occupation (HMOs) are amongst the more difficult to manage properties in the sector. In some HMOs the standards of management and living conditions can be poor, for example research has shown the risk in HMOs from hazards such as fire can be as much as four or more times higher than the risk in a residential property occupied by a single household. Licensing allows local authorities to proactively identify and engage with landlords, particularly with the less responsible private landlords.

Mandatory Licensing of Houses in Multiple Occupation

- 3.4 The Council currently license or have licence applications for 995 larger Houses in Multiple Occupation across the City under the existing national mandatory HMO licensing scheme. Current breakdown by ward is below:

Ward Name	Count of Licences
St. Peter's And North Laine	245
Hanover And Elm Grove	200
Queen's Park	116
Moulsecoomb And Bevendean	93
Regency	60
Hollingdean And Stanmer	59
Preston Park	57
Goldsmid	40
Brunswick And Adelaide	37
Central Hove	25
Westbourne	19
East Brighton	16
Rottingdean Coastal	7
Withdean	7
South Portslade	5
Wish	4
Hove Park	3
Hangleton And Knoll	1
Patcham	1
Total	995

Additional Licensing of Houses in Multiple Occupation

- 3.5 Following resident and councillor concerns, Housing Committee approved the recent Additional Licensing designation on the basis of evidence that a significant proportion of the smaller HMOs in the five Lewes Road wards affected are being managed sufficiently ineffectively as to give rise to one or more particular problems either for those occupying the HMOs or for members of the public.

Housing Committee on 20 June 2012 designated the wards of Hanover & Elm Grove, Moulsecoomb & Bevendean, St Peters & North Laine, Hollingdean & Stanmer and Queen's Park as subject to Additional Licensing under S56(1) of the Housing Act 2004 in relation to smaller Houses in Multiple Occupation of two or more storeys and three or more occupiers. The designation came into force from 5 November 2012 and will last for 5 years.

- 3.6 The designation was agreed following an extensive two phase consultation exercise. Housing Committee considered representations, a comprehensive evidence base and resourcing before they made their decision to approve the Additional Licensing designation.
- 3.7 Before designating an additional HMO licensing scheme, the council had to comply with the specific requirements set out in the Housing Act. Failure to do

this would leave the Council open to Judicial Review. Regulations issued under the Housing Act 2004 introduced the mandatory licensing of HMOs that have 3 or more storeys and are occupied by 5 or more persons who are living in 2 or more households. The Act also allows the discretionary licensing of HMOs and other private rented housing to meet local needs in certain circumstances.

Sections 56 and 57 of the Housing Act 2004 provide local authorities with the power to designate areas as being subject to an Additional HMO Licensing Scheme in respect of some or all of the HMOs in that area that are not already subject to mandatory licensing

- 3.8 Additional Licensing schemes may be introduced for a period not exceeding 5 years and can be used to address problems that may exist in sub-standard converted self-contained flats and smaller HMOs. The Council cannot profit from any licensing scheme. The licence fee that is set must be justifiable and representative of each individual local authority's process. The fee will cover a licence for 5 years. Setting higher fees than any scheme requires to support resourcing would be open to challenge as would failure to sufficiently resource the operation of any new scheme. In line with statutory provisions the Housing Committee paper (20 June 2012) identified fees and resourcing to support the Additional Licensing designation in the five Lewes Road wards. Any further Additional Licensing or Selective Licensing scheme would also be subject to the same Housing Act requirements to identify fees and resources to operate the scheme.
- 3.9 In addition, the Housing Committee paper set out provisions for future review of the Additional Licensing scheme progress within the 5 year designation advising that 'The scheme will be reviewed after 2 years of implementation'. Future review of the existing Additional HMO Licensing scheme will be reported back to Housing Committee.
- 3.10 Before introducing an Additional HMO Licensing Scheme, the council must comply with the specific requirements set out within sections 56 and 57 of the Housing Act 2004. This includes being satisfied that a significant proportion of the HMO's proposed under the additional scheme are being managed sufficiently ineffectively. The scheme must be consistent with the authority's overall housing strategy.
- 3.11 We have been evidencing management issues arising in relation to smaller HMOs in the five Lewes Road wards since 2008, following reporting of University of Brighton research on the issues to Strategic Housing Partnership, and including a scrutiny report on Students in the Community on 28 January 2010, and the Student Housing Strategy. The Student Housing Strategy, adopted in November 2009, is part of the overarching city-wide Housing Strategy 2009 – 2014.
- 3.12 Welcoming the economic contribution of the universities to the City, the Student Housing Strategy outlined a strategic approach to the supply and management of student housing in the City.
- 3.13 While in no way limited to or seeking to target student households, implementation of additional HMO licensing schemes in the City was included in

the Student Housing Strategy action plan along with other measures to support and enhance the quality and management of housing and residential environments within HMO dominated studentified neighbourhoods.

- 3.14 In addition to continued joint working with both Universities in areas including enhancement of their community liaison work, the Student Housing Strategy also sought to promote and enable the appropriate development of purpose built student accommodation at suitable locations within the City. Over 2000 units of new purpose built student housing have now been approved in the City including large developments at Northfield, University of Sussex Campus & Varley Halls of Residence for University of Brighton in Coldean. Further new purpose built student housing is currently proposed on other major sites in the City.
- 3.15 Following Housing Committee approval for additional HMO licensing to be introduced in the five Lewes Road wards commencement of the designation was from 5 November 2012. As of 5 June 2013 the Council has received 1451 valid Additional License applications, breakdown by ward is below:

Table - valid Additional Licensing applications received as of 5 June 2013

Ward Name	Count of Licences
Moulsecoomb and Bevendean	553
Hanover And Elm Grove	400
St. Peter's And North Laine	271
Hollingdean And Stanmer	161
Queen's Park	66
Total	1451

- 3.16 In the Housing Committee report of 20 June 2012 we estimated that there were potentially between 1,500 & 3,000 smaller HMOs in the five wards that may be subject to licensing under Additional Licensing proposals.
- 3.17 In order to ensure that landlords and agents of all licensable HMOs in the five Lewes Road wards comply with the Additional Licensing designation the Private Sector Housing Team have also commenced an Additional Licensing enforcement programme targeting smaller HMOs yet to register under the Additional Licensing designation.

London Borough of Newham's Additional & Selective Licensing schemes

- 3.18 London Borough of Newham has sought to implement borough wide licensing to ensure that the private rented sector provides decent quality accommodation and that anti-social behaviour is effectively managed. Newham's borough wide introduction of Selective and Additional Licensing is currently the largest regulatory intervention in the private rented sector in the UK. Newham is the first council in the country to implement a scheme to license all private rented properties.

- 3.19 Newham consulted extensively with residents, stakeholders, private sector tenants, landlords and lettings agencies. 74% of residents and 76% of private tenants supported the borough-wide licensing scheme. Newham's scheme followed creation of a 'task force' to combat 'sheds with bed's'. illegal buildings built at the bottom of gardens which often house tenants living in very poor conditions exploited by rogue landlords. The initiative was successfully piloted on a small scale in the borough's Little Ilford Neighbourhood Improvement Zone (NIZ). The pilot scheme achieved 100% compliance following enforcement action against a number of non-compliant landlords.
- 3.20 As of 3 June 2013 it has been reported that Newham Council has received licence applications from 30,000 private landlords.
- 3.21 Newham have evidence that poor property and tenancy management, and associated anti-social behaviour is found in all types of private rented properties and in all wards of the borough. Therefore, Newham have introduced a comprehensive, borough-wide licensing scheme with the clear objective to secure a consistent level of responsible property management among all private landlords.
- 3.22 Newham has declared 2 licensing designations operative from January 2013 each encompassing the whole of the borough of Newham but capturing different property use types
- Firstly, Newham has introduced a borough wide Additional Licensing designation of Houses in Multiple Occupation (HMOs) that will require all landlords who let a property that is occupied by 3 or more non-related occupiers that share some basic facilities or amenities such as a kitchen or bathroom to have a licence;
 - Secondly Newham has introduced a borough wide Selective Licensing designation that requires landlords who let all other residential accommodation that falls outside of the mandatory and additional HMO definition to have a licence.
- 3.23 All private landlords that let properties within the borough which will be designated as an Additional or Selective Licensing designation will require a licence from Newham for each of their rented properties. Newham believe that this will address the negative issues identified.
- 3.24 In introducing Additional and Selective Licensing Newham have demonstrated that over and above the application of their existing statutory powers in relation to private sector housing there are circumstances supporting the establishment of a Selective Licensing scheme and designation of Additional Licensing and the evidence needed to support this including that the local authority has:
- consulted with local residents, landlords and tenants for a minimum of ten weeks;
 - a robust evidence base for introducing an Additional Licensing scheme, demonstrating that there are significant management issues and poor property condition that need addressing within a designated area;
 - a robust evidence base for introducing a Selective Licensing scheme, demonstrating there are significant management issues such as low housing demand and/or significant and persistent antisocial behaviour that need addressing within a designated area.

- 3.25 Should Brighton & Hove consider further Additional Licensing or introducing Selective Licensing the same requirements would apply prior to Housing Committee being in a position to consider any recommendation to designate any area subject to such any new scheme.

Outline of the main Local Authority Housing Powers in relation to Private Sector Housing

- 3.26 The Housing Act sets out a range of local authority powers in relation to private sector housing, including circumstances where a local authority may consider establishing a Selective Licensing scheme or any designation of Additional Licensing and the evidence needed to support this. More details on the main powers available to local authorities are below.

Outline of the main Local Authority Housing Powers in relation to Private Sector Housing

(Taken from DCLG guidance – Dealing with Rogue Landlords – A Guide for Local Authorities - August 2012)

Housing Act 2004

What the power allows

Housing Health and Safety Rating System is an evidenced based system used to assess housing conditions in all residential property. The Housing Health and Safety Rating System sets a minimum standard for all residential properties, ensuring that they are safe and habitable.

The Housing Health and Safety Rating System comprises an assessment of the presence and severity of 29 hazards, including 'excess cold'. Local authorities have a duty to take enforcement action to secure necessary improvements where Category 1 (serious) hazards are present. Local authorities also have discretionary power to intervene where Category 2 hazards are present. In determining the most appropriate form of action, local authorities can consider the extent of vulnerability of person's living (or likely to live) in the accommodation.

What the power can deliver

A local authority can carry out an assessment of a home and will look at the likelihood of an incident arising from the condition of the property and what the harmful outcomes might be.

As a result of the assessment, the council will be able to say whether the property has 'Category 1' (serious) or 'Category 2' (other) hazards.

If the local authority discovers serious Category 1 hazards, they will first discuss these with the home owner or landlord to encourage them to deal with the problems. If this isn't successful, then they can:

- serve a hazard awareness notice to draw attention to the problem

- issue an improvement notice to the landlord to carry out improvements to the property
- take emergency action to fix the hazard where there is an immediate risk
- ban the use of the whole or part of a dwelling or restrict the number of people living there using a prohibition order.

If a home owner/landlord doesn't carry out the requirements of a legal ('statutory') notice issued by the local authority, they could face a fine which is currently up to £5,000 but will be increased to unlimited when the Legal Aid Sentencing and Punishment of Offenders Act is commenced.

Mandatory Licensing of Houses in Multiple Occupation

What the power allows

There is a statutory duty on local authorities to license larger higher risk Houses in Multiple Occupation of three or more storeys housing five or more unrelated persons. These properties are seen as higher risk, both because of the nature and condition of the properties, and the vulnerability of their occupants.

The mandatory Houses in Multiple Occupation licensing regime addresses poor management practices and aims to secure a reduction in death and injury from fire and other health and safety hazards, and ensures adequate provision of amenities.

What the power can deliver

Private landlords must be deemed to be a "fit and proper" person in order to be granted a licence.

Local authorities can impose conditions on a licence, such as how the licence holder deals with the behaviour of occupiers and the maximum number of occupants allowed in the property. They can also impose conditions requiring adequate amenities and safety requirements to ensure decent standards in properties where there are several households sharing basic facilities.

Breach of a licence condition is an offence currently subject to a fine of up to £5,000. Letting or managing a property without a licence is a criminal offence currently subject to a maximum fine of £20,000.

Additional Licensing of Houses in Multiple Occupation

What the power allows

Poor conditions and bad management practices can manifest themselves in smaller Houses in Multiple Occupation in specific areas. These smaller types of Houses in Multiple Occupation may not meet the mandatory licensing criteria but there is a discretionary power to extend licensing to smaller types of Houses in Multiple Occupation. Local authorities have the general consent to introduce such schemes subject to local consultation.

What the power can deliver

In order to introduce additional licensing for Houses in Multiple Occupation local authorities are required to consult with local residents, landlords and tenants for a minimum of ten weeks.

Local authorities are required to provide a robust evidence base for introducing a scheme, such as demonstrating there are significant management issues and poor property condition that need addressing within a designated area.

Once a designation is confirmed landlords who operate within the designated area will be required to apply for a Houses in Multiple Occupation licence for each of their properties.

Selective Licensing

What the power allows

This is a discretionary power to licence all privately rented properties in a designated area that is deemed to suffer from low housing demand and/or significant and persistent antisocial behaviour. Such schemes are subject to local consultation. Selective Licensing is intended to address the adverse impact that poor management by a minority of private landlords, and antisocial behaviour by a few tenants, can have on other tenants and the wider community.

What the power can deliver

In order to introduce a Selective Licensing scheme local authorities are required to consult with local residents, landlords and tenants for a minimum of ten weeks.

Local authorities are required to provide a robust evidence base for introducing a scheme, such as demonstrating there are significant management issues that need addressing within a designated area.

Once a designation is confirmed landlords who operate within the designated area will be required to apply for a licence for each of their properties.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 In order to introduce Additional Licensing for Houses in Multiple Occupation or any Selective Licensing local authorities are required to consult with local residents, landlords and tenants for a minimum of ten weeks.
- 4.2 In line with these statutory requirements Housing Committee report of 20 September 2012 outlined extensive consultation undertaken on Additional Licensing proposals for the five Lewes Road wards. In addition to attending various meetings including with landlord groups, representatives of letting agents and Local Action Teams and landlords Housing Committee were advised of the following responses to consultation that took place from 18 January to 31 March 2012:
 - 311 responses were received via the consultation portal (majority from landlords & agents) 44% (136) yes & 56% (173) no.

- 1010 responses were received from the door to door survey of residents and businesses in the 5 wards. 71% (713) yes & 8% (81) no, with 14% (146) don't know & 7% (70) not answered.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There are no direct financial implications arising from this report however, should further licensing be considered in the future, it would be necessary to review the staffing resources needed to carry out the required consultation and evidence gathering exercise. Fees for any future schemes would need to be set at a level reasonably expected to recover all costs of administering that scheme. Fees in relation to the existing two schemes are reviewed as part of the budget process each year.

Finance Officer Consulted: Michelle Herrington Date: 28/05/13

Legal Implications:

- 5.2 Before a designation for selective or additional licensing can be introduced, the council must comply with the statutory framework of the Housing Act 2004. Designations can be introduced for an area, areas or the whole of the city, where the council is satisfied that either an area is, or is likely to become, an area of low housing demand and that the making of the designation, when combined with other measures, will contribute to the improvement of the social and economic conditions in the area.

Alternatively, designations for selective licensing can be considered where the authority considers that the area is suffering from anti-social behaviour (ASB) and the following criteria are satisfied:

- i) the area is experiencing a significant and persistent problem caused by ASB
- ii) that some or all of the private sector landlords who have let premises in the area are failing to take action to combat the problem that it would be appropriate for the to take and
- iii) that making a designation will, when combined with other measures lead to a reduction in, or the elimination of, the problem.

The definition of "private" sector landlord does not included a non-profit registered provider of social housing or a landlord falling within exceptions set out in Regulations.

Additional matters that the council must consider before a selective licensing designation is made are specified in sections 81 and 82 of the 2004 Act, and in particular that the exercise of the power is consistent with its overall housing strategy.

Equalities Implications:

- 5.3 A full equalities impact assessment was undertaken in relation to the additional licensing designation for the five Lewes Road wards. No negative consequences of additional licensing were identified. A further equalities impact assessment would need to be undertaken should any further licensing proposals be forthcoming.

Sustainability Implications:

- 5.4 Maintenance and improvement of existing housing stock is generally more sustainable than continued deterioration. Adoption of measures such as licensing of HMOs should improve management and standards for the residents in those homes and the liveability of residential areas impacted by large numbers of HMOs more generally.

Crime & Disorder Implications:

- 5.5 An Additional Licensing designation aligns to evidence of significant management issues and poor property condition that need addressing within a designated area. Adoption of any Selective Licensing scheme is intended to address the adverse impact that poor management by a minority of private landlords, and antisocial behaviour by a few tenants, can have on other tenants and the wider community. Such licensing should therefore assist local enforcement agencies gain a better understanding of the problems in areas where any designation applies and help address concerns about crime and disorder including anti social behaviour and neighbourhood nuisance.

Risk and Opportunity Management Implications:

- 5.6 The risks associated with the current additional HMO licensing designation have been managed in compliance with the Council's risk management strategy and a full risk log was attached to the relevant Housing Committee report.

Risks relating to consideration of any further designation are outlined in the report.

Public Health Implications:

- 5.7 In terms of community wellbeing and resilience the Director of Public Health Annual report identifies that Housing in Brighton & Hove represents a particular vulnerability for children and adults. The Joint Strategic Needs Assessment identifies that poor housing conditions present risks to health.
- 5.8 Any improvement of management and standards of HMOs arising from HMO licensing should have a beneficial Public Health impact.

Corporate / Citywide Implications:

- 5.9 Housing Committee approved the Additional Licensing designation on the basis of extensive consultation and robust evidence that a significant proportion of the

smaller HMOs in the five Lewes Road wards affected are being managed sufficiently ineffectively as to give rise to one or more particular problems either for those occupying the HMOs or for members of the public. The scheme should have a beneficial impact on the communities in the areas covered by the existing designation.

- 5.10 Residents in other parts of the City may consider that issues that have led to proposals for additional licensing in the 5 identified wards also exist in their area. The Housing Act parameters around consideration of any further Additional Licensing or the introduction of any Selective Licensing are outlined in the report.
- 5.11 The experience with mandatory licensing suggests that Additional licensing would have no significant adverse effect on property supply.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 An outline of the main local authority housing powers in relation to Private Sector Housing are outlined in the report.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The reasons for report recommendation are outlined in the report.

SUPPORTING DOCUMENTATION

Appendices:

None

Documents in Members' Rooms

None

Background Documents

None .