

<b>HOUSING AND NEW HOMES COMMITTEE</b>	<b>Agenda Item 61</b>
	Brighton & Hove City Council

<b>Subject:</b>	<b>Private Rented Sector Update</b>		
<b>Date of Meeting:</b>	<b>16 January 2019</b>		
<b>Report of:</b>	<b>Executive Director for Neighbourhoods, Communities &amp; Housing</b>		
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<b>Ward(s) affected:</b>	<b>All</b>		

## FOR GENERAL RELEASE

### 1. PURPOSE OF REPORT AND POLICY CONTEXT

1.1 The purpose of this report is to update Housing & New Homes Committee on the following matters in relation to Private Rented Sector activity:

- Progress with current private rented sector licensing activity;
- Recent legal rulings surrounding licence fees;
- Progress with the Rent Smart initiative previously endorsed by Housing & New Homes Committee.

### 2. RECOMMENDATIONS:

2.1 That Housing & New Homes Committee members note:

- Progress with current private rented sector licensing activity previously agreed by Housing & New Homes Committee.
- Recent legal rulings surrounding licence fees.
- Progress with the Rent Smart initiative previously endorsed by Housing & New Homes Committee.

### 3. CONTEXT/ BACKGROUND INFORMATION

**Progress with current private rented sector licensing activity**

**Additional licensing of smaller Houses in Multiple Occupation**

- 3.1 The introduction of HMO licensing in the city aims to improve management and housing conditions across the private rented sector. Benefits include:
- Responsible landlords gain from the improved clarity of their role in raising property and tenancy management standards while action is taken to tackle those who flout their legal responsibilities.
  - Tenants are clear on what they can expect from both the homes that they rent and the landlord that they rent it from, with minimum standards resulting in better managed, quality and safer homes.
  - Communities benefit from a consistent approach towards proactively assessing and improving housing conditions across an area.
- 3.2 Housing & New Homes Committee on 17 November 2017 agreed to designate all 21 wards in the city as subject to additional licensing under S56(1) of the Housing Act 2004 in relation to smaller HMOs of two or more storeys occupied by three or more people. It was agreed that the designation was to take effect from 1 March 2018 and last for five years.
- 3.3 The city formerly had two Additional Licensing Schemes in place in parts of the city. The first scheme covered the Lewes Road area and came to an end at midnight on 4 November 2017. The City Centre scheme covering 7 central wards came into effect on 2 November 2015 and was not due to expire until midnight on 1 November 2020. In order to ensure a consistent citywide Additional Licensing Scheme, while the City Centre scheme was formally revoked, transitional arrangements were agreed for current licence holders in that scheme to ensure incorporation into the new city-wide scheme and that they were not financially penalised through their scheme ending sooner than anticipated.
- 3.4 An update on progress with city-wide additional HMO licensing activity since commencement of the scheme is outlined in the table below:

<b>Additional Licensing Statistics (21 February 2018 to 20 December 2018)</b>	
Number of Applications Received	1,771
Number of Applications reviewed and Allocated to Private Sector Housing Technical Team	1,694
Number of Draft Licences served	1,155
Number of Full Licences served	844

In addition, there are 372 smaller HMOs 'pass-ported' into the scheme under transitional arrangements from the former City Centre additional licensing scheme.

## **National mandatory licensing of larger HMOs**

- 3.5 Mandatory licensing of larger HMOs, three storey, 5 person and above, has been in place since 2006. The current total number of National Mandatory licences 'in licensing' i.e. at Application, Draft or Full Licence stage is 1,264. Current activity under the national mandatory licensing scheme in the city is outlined below:

<b>National Licensing Statistics (21 February 2018 to 20 December 2018)</b>	
Number of Applications Received	309
Number of Applications Allocated to Technical Team	244
Number of Draft Licences served	138
Number of Full Licences served	99

- 3.6 An extension of mandatory licensing regulations came into force on 1<sup>st</sup> October 2018. These regulations extended mandatory licensing to all HMOs occupied by 5 or more people from two or more households and added mandatory conditions for room sizes and refuse disposal. The Ministry of Housing Communities & Local Government (MHCLG) have worked to update the guidance to make the position clearer for local authorities with regards to the new room size regulations. The guidance is expected to be uploaded onto the government's gov.uk web site shortly.

## **Selective licensing update**

- 3.7 In relation to the selective licensing agreed by Housing & New Homes Committee in November 2017 this was subject to Secretary of State consent. This has been refused. We have submitted a pre-action protocol letter to Secretary of State indicating we may pursue judicial review. The Secretary of State has refused to consider the application on the basis of anti-social behaviour and our legal advice is that this is not correct given the history of what has taken place. If they refuse to reconsider we have the option to commence judicial review.

## **Implications of recent legal rulings for licence fee structures**

- 3.8 Two recent legal rulings have put a duty on local authorities to review their fee structure for their PRS licensing schemes. The cases, R (Gaskin) v Richmond-upon-Thames LBC and R (Hemming t/a Simply Pleasure) v

Westminster CC, mean that fees local authorities charge for the licensing of houses in multiple occupation (HMO) and selective licensing schemes must be applied in two parts:

- Part one to cover the costs of administering the application process;
- Part two, only on award of a licence, to cover the costs of running the scheme itself.

3.9 MHCLG has recently (21 December 2018) circulated information on their view of the implications of these legal rulings on licence fee structures, including advising local authorities to take their own legal advice in implementing changes to the structuring of their fees to take account of the outcomes of the cases.

3.10 Housing & New Homes Committee on 17 November 2017 agreed the fee structure for the HMO licensing schemes applying to the existing Mandatory HMO and City Centre additional licensing schemes from 1 January 2018 and the new city-wide additional licensing scheme from 1 March 2018. Within this fee structure the HMO licensing fees are reviewed every year to ensure that they accurately reflect the actual costs incurred. The fee structure was calculated to ensure cost recovery taking into account existing law and guidance on fees. Brighton and Hove City Council's private sector housing HMO licence fees for the existing licencing schemes (mandatory and additional) will therefore be split from 1 April 2019, as required by legislation and within the existing fee structure approved by Committee in November 2017.

### **Rent Smart update**

3.11 An update on the Rent Smart initiative previously endorsed by Housing & New Homes Committee is appended to this report.

## **4 ANALYSIS AND CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

4.1 As previously stated, splitting the fees is a legal requirement and not optional.

4.2 HMO licence fees were originally calculated, in line with legislation and guidance, to ensure cost recovery. Annual increases in line with standard pay and price inflation to the licence fees are proposed for all HMO licence fees which will ensure that the fees continue to recover costs.

## **5 COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 The mandatory HMO licences are a statutory requirement and determined by central government (which undertakes the relevant consultation). As reported to 15 November 2017 Housing & New Homes Committee, extensive consultation was undertaken on the additional HMO licencing scheme itself prior to implementation including the original fee structure which remains unchanged.

## **6 CONCLUSION**

- 6.1 Members are asked to note the content of this report

## **7 FINANCIAL AND OTHER IMPLICATIONS**

### Financial Implications

- 7.1 All license fees are calculated to recover costs. Splitting of the license fee into two parts is now a legal requirement as outlined in this report. By splitting the fee, there is a risk that applicants may not pay the final instalment, reducing fee income with the possibility of a budget pressure arising. This will need to be closely monitored. However this is mitigated by the fact that the HMO licence will not be issued without the full payment due being made.

*Finance Officer Consulted: Monica Brooks Date: 08/01/19*

### Legal Implications

- 7.2 Recent legal rulings surrounding licence fees (Gaskin v Richmond Upon Thames LBC, Hemming t/a Simply Pleasure Ltd v Westminster CC) mean that local authorities are required to levy fees in two stages as set out in paragraph 3.7. The proposal to split the fees set out in this report means that the council's HMO licence fees will comply with the relevant legislation.

- 7.3 The issues around pursuing selective licencing are set out above. An alternative option might be to build on our current position and submit a fresh application.

*Lawyer consulted: Simon Court Date 08/01/19*

### Equalities Implications

There are no equalities implications arising directly from this report. These were addressed when the original fees were set (please see relevant committee reports sourced in the background documentation section below).

### Sustainability Implications

There are no sustainability implications arising directly from this report. These were addressed when the original fees were set (please see relevant committee reports sourced in the background documentation section below).

### Crime & Disorder Implications

There are no crime and disorder implications arising directly from this report. These were addressed when the original fees were set (please see relevant committee reports sourced in the background documentation section below).

### Risk and Opportunity Management Implications

These are outlined in the body of the report. These were addressed when the original fees were set (please see relevant committee reports sourced in the background documentation section below).

### Public Health Implications

None arising directly from this report. These were addressed when the original fees were set (please see relevant committee reports sourced in the background documentation section below).

### Corporate/City Wide Implications

These were addressed when the original fees were set (please see relevant committee reports sourced in the background documentation section below).

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

#### **Appendix 1: Update on Rent Smart**

#### **Background Documents**

1. Housing & New Homes Committee, Proposed Additional Licensing Scheme for Housing in Multiple Occupation Report, 15 November 2017.
2. Housing & New Homes Committee, Private Rented Sector Licensing Schemes Reports 16 November 2016, 14 June 2017.

3. Part, 2, Housing Act 2004.