

REPORT TITLE: EXPANSION OF HMO MANDATORY LICENSING

4 JULY 2018

REPORT OF PORTFOLIO HOLDER: LEADER WITH PORTFOLIO HOLDER FOR HOUSING SERVICES

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WARD(S): ALL

PURPOSE

The Government has passed legislation that widens the scope of mandatory licensing for Houses in Multiple Occupation (HMOs) from 1<sup>st</sup> October 2018. This is 'The Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018'.

The report outlines the purpose of the expansion of HMO licensing and the benefits this will offer to the Council, occupants and neighbourhoods where HMO's are located. It also recommends an appropriate fee aimed at full cost recovery and the additional resources required to administer the additional work.

RECOMMENDATIONS:

1. That the new requirements resulting from the changes introduced by the new legislation to expand HMO mandatory licensing be noted.
2. That the HMO licence fee be set at £900 (per 5 year licence)
3. That the additional resource requirements be supported
4. That the Corporate Head of Housing, in consultation with the Corporate Head of Resources, be authorised to negotiate terms with Idox for the provision of additional licensing software to support the administration of the additional licensing, as set out in the report, and a Direction be made under Contracts Procedure Rule 2.4 a) accordingly.

IMPLICATIONS:1 COUNCIL STRATEGY OUTCOME

- 1.1 The Council Strategy recognises 'Delivering Quality Housing Options' as one of the 5 key themes within the strategy.
- 1.1 The expansion of HMO mandatory licensing will help raise standards in certain HMOs where they are occupied by a minimum of five individuals forming 2 or more households, regardless of the number of storeys and which currently are exempt. The change is the fact that from October, the number of storeys will no longer be relevant to the definition of a HMO.
- 1.2 The Council Strategy details that it will be delivered with a number of core principles in mind including 'Innovation, Improvement and Investment' and these three principles will help guide the required delivery of the expanded HMO licensing regime.

2 FINANCIAL IMPLICATIONS

- 2.1 The Housing Act 2004 allows the Council to set a fee to meet the full costs associated with the issuing of a HMO licence. Such fees should not generate a profit for the Council but should be a true reflection of the cost of the considerable work involved in the preparation and issuing of a HMO licence and the ongoing delivery and operational costs. This is in order to avoid a shortfall in the funding of the scheme and prevent a drain on other general fund service budgets or council tax.
- 2.2 The proposed cost of an HMO licence for a 5 year period is £900. The fee is comparable with other local authorities in Hampshire which range from a fee charged by Eastleigh Borough Council of £785 to Hart Council of £964; each for a five year licence.
- 2.3 As set out in the workforce implications below, implementing the new licensing cannot be absorbed within existing resources and additional staff will be required.
- 2.4 It is estimated that the scheme will generate income in the region of £400,000-£450,000 over 5 years, with additional ongoing annual costs estimated at £62,500 as well as a significant additional burden on existing staff. In addition, one off system upgrade costs are estimated at £15,000.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The Council has a legal duty to mandatory license certain types of HMOs and failing to do so would be in breach of its statutory obligations.
- 3.2 To support the administration of the additional licensing requirements, officers are currently reviewing potential software solutions. Idox, one of the Council's existing suppliers (Planning, Environmental Health, Building Control etc) offer

a specific module to support this work, with costs estimated between £10-15,000, which would be less than half the cost of a bespoke new solution. Subject to satisfactory trials, it is recommended that a direction be made in accordance with Contract Procedure Rule 2.4 a) to negotiate with a single supplier.

- 3.3 A number of criminal offences may arise contrary to s.72 Housing Act 2004 where licenses are required and not obtained or where conditions are not adhered to. Where these offences lead to prosecution, additional legal resources may be required.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 The Council's existing Private Sector Housing (PSH) Team currently administer HMO licensing for 113 properties, and has no capacity to absorb the administration involved with what is estimated to be up to 500 additional licences over a 5 year period.
- 4.2 Mandatory licensing of HMOs came into force in 2006 and to date the council has licensed 113 HMOs. Licenses which have already been granted for existing HMOs will continue to be valid until their expiry (usually 5 years after they have been granted).
- 4.3 The Government proposes to extend the scope of mandatory HMO licensing from 1 October 2018.
- It will apply where certain HMOs are occupied by five persons or more in two or more households, regardless of the number of storeys.
  - This includes any HMO which is a building or a converted flat where such householders lack or share basic amenities such as a toilet, personal washing facilities or cooking facilities.
  - It also applies to purpose built flats where there are up to two flats in the block and one or both are occupied as an HMO.
- 4.4 The Private Sector House Condition Report 2015 estimated that Winchester had 713 HMOs, but this figure was considered to be on the conservative side. It is estimated that the number of additional HMO properties that will require to be licensed in the district will be in excess of 500.
- 4.5 As the current team will not be able to absorb the additional duties, it is proposed to recruit an additional housing officer (scale 6 estimated cost at £50,000) and an administrator (0.5 fte scale 3 at an estimated cost of £12,500), both funded directly from licence fee income.

#### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The expansion of HMO mandatory licensing has no impact on Council property or assets.

## 6 CONSULTATION AND COMMUNICATION

- 6.1 The expansion of HMO mandatory licensing is a legal requirement which the Council is obligated to undertake under its statutory duties. Discussion has taken place at the county wide Housing Advisory Group (HAG) meeting around the wider issues of the expansion of HMO mandatory licensing.
- 6.2 Officers are currently liaising with all letting agents and local landlords to ensure they are aware of the new requirements.

## 7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 The expansion of HMO mandatory licensing will impose greater management responsibilities on the designated licence holder. Such individuals also have to satisfy the council that they are a 'Fit and proper person' to hold a licence. This in turn should assist the Council in being able to address potential HMO complaints by way of licence conditions rather than through the use of various pieces of legislation. The requirement for landlords to inform the Council of licensable HMOs they operate will also assist the Council in identifying the scale of HMO numbers across the city.

## 8 EQUALITY IMPACT ASSESSEMENT

- 8.1 None

## 9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 The purchasing of HMO licensing software may necessitate the need for a Data Impact Assessment and this is to be determined as part of the options appraisal of potential systems.

## 10 RISK MANAGEMENT

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<b>Property</b> N/A	N/A	N/A
<b>Community Support</b> Minimum risk of negative press coverage from affected landlords	Wider press promotion and increased information on the web site to inform landlords of their legal obligations to apply for a licence	Opportunity to positively enhance the Council's reputation by increasing the number of licensed HMOs
<b>Timescales</b> By 1 October 2018 and ongoing	Manual systems already in place	Focuses resources on current systems to enhance and improve them through acquisition of IT software.

<b>Project capacity</b> Scope of sufficiently skilled personnel in the wider external job market place	Ability to recruit additional and appropriately qualified staff within a finite external market place	Expansion of the PSH Team adds to and raises the profile of the wider Housing Services functions
<b>Financial / VfM</b> Under estimating the processing and ongoing costs involved in HMO licensing	Ensure all necessary and appropriate costs are taken into consideration to avoid the need to seek future funding from alternative budgets	Opportunity to examine and identify if stream lining of work processes is possible
<b>Legal</b> Additional legal resource in respect of a potential increase in enforcement / prosecution action	Out source potential additional legal work if necessary	Improved standards in licensed HMOs
<b>Innovation</b> Exploring IT and additional staffing opportunities	Ensure the most appropriate and best value for money HMO licensing software system is purchased / new competent and efficient staff employed	An opportunity to improve the delivery and operational capability of the PSH Team in respect of HMO licensing
<b>Reputation</b> Risk of having under and / or over estimated the number of HMO properties required to be licensed	Ensure details around the new requirements are adequately publicised to agents, landlords, students, tenants and the wider general public.	An opportunity to promote both HMO licensing and the wider functions of the PSH Team.
<b>Other</b> None	N/A	N/A

## 11 SUPPORTING INFORMATION:

11.1 Expansion of HMO licensing and requirement for additional staff and software funded by HMO licence fee charge.

### 11.2 Background

11.3 HMO licensing offers a number of positive advantages to the Council, occupants of HMOs and to the neighbourhoods where they are located. The Council currently holds limited information regarding HMOs although licensing will result in more comprehensive records and data. It will also highlight poor condition or potential areas where enforcement action may be needed.

11.4 The original HMO licence fee was set in 2006 and although there have been incremental rises since then, there is a need to seek formal approval for the

level of current fee associated with the cost of managing and operating the licensing scheme.

- 11.5 Mandatory Licensing for Houses in Multiple Occupation (HMOs) has been a legal requirement since the Housing Act 2004 came into force in 2006. Mandatory licensing currently requires only certain HMOs to be licensed. These are those that are 3 storeys or more, house 5 or more persons in 2 or more households and have shared facilities (bathrooms/kitchens) or those where facilities are not self-contained within an individual unit. Presently there are 113 licensed HMOs in the Winchester district.
- 11.6 The Government has passed legislation that widens the scope of mandatory HMO licensing from 1 October 2018. It will apply where HMOs are occupied by 5 persons or more forming 2 or more households. However this will be extended to cover all buildings not just those of 3 or more storeys. Any building or a converted flat where such householders lack or share basic amenities such as a toilet, personal washing facilities or cooking facilities will be included. The extended scheme will also apply to purpose built flats where there are up to two flats in the block and one or both are occupied as an HMO. The current fee level includes the proposed future changes in legislation.
- 11.7 It is estimated that the change in legislation will increase the number of HMOs in Winchester requiring a licence to around an additional 500 properties.
- 11.8 HMOs in the private rented sector provide valuable, low cost housing to many people such as students and those on lower incomes who due to housing affordability issues may otherwise be homeless. However, the sector is perceived to be associated with anti-social behaviour, poor living conditions and it houses some of the most vulnerable members of our society.
- 11.9 Mandatory licensing was originally introduced by Government to tackle those larger HMO properties deemed to present the highest risks. Since 2006 however the private rented sector has greatly expanded and the number of HMO properties has also increased nationally. Although the vast majority of HMOs are run in a satisfactory manner, the Government is aware of a rogue landlord element and part of their reason for expanding HMO licensing is to tackle this small group of unscrupulous landlords.
- 11.10 Section 63(3) of Part 2 of the Housing Act 2004 provides that a Local Housing Authority (LHA) may require an application for a HMO licence to be accompanied by a fee. This fee is at the discretion of the LHA but should, according to section 63(7), reflect the following:
- a) all costs incurred by the LHA in carrying out their functions under this part of the Act, and;
  - b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 of the Housing Act 2004 in relation to HMO's (in so far as they are not recoverable under, or by virtue of, any provision of that chapter)

- 11.11 In 2006 The Local Government Association (LGA) in collaboration with the Improvement and Development Agency (IDeA), Chartered Institute of Public Finance and Accountancy (CIPFA) and the Office of the Deputy Prime Minister (ODPM) in an attempt to assist LHAs, developed a HMO licensing fees toolkit.

This stated that:

“It is important for authorities to remember that if they set licensing application fees at a level that do not cover the costs of delivering the licensing scheme the shortfall in funding the scheme will need to come from another source, such as other general fund service budgets or from council tax. This is a decision that local authority members need to take, so the financial implications of what is or is not included in the proposed fees needs to be explained to them.”

- 11.12 The Government to date has not made any Regulations under Section 63(5) of the Housing Act 2004 regarding the setting of HMO licensing fees. Local authorities must, therefore, determine their own fee structures. There is no “cap” on the maximum fee that may be charged but the fee must not exceed costs incurred by the local authority in setting up and administering the licensing scheme.
- 11.13 The charging template included as Appendix 1 devised by Winchester City Council is based on that compiled by the Government in 2006 and comprises of PSH officer average hourly on-costs aligned to each element of the application process.
- 11.14 The current fee is set at £900 for a new licence and £440 for a licence renewal. HMO licences are not transferrable and so should a property be sold the new owner has to apply for a new licence in their own right.
- 11.15 Details of proposal
- 11.16 An explanatory memorandum to The Housing and Planning Act 2016 (the Act) which included the proposal to extend mandatory HMO licensing advised: ‘.....this instrument comes into force on 1 October 2018. Before that date Local Housing Authorities (LHAs) must promote the changes this instrument makes and the extension of mandatory licensing in their respective areas. During this period, LHAs must also process applications for licences relating to those HMOs prescribed by this instrument. However, any licences issued in advance by virtue of this instrument cannot come into force before 1 October 2018. Landlords of HMOs falling within the prescribed description who fail to apply for licences by 1 October 2018 commit a criminal offence from that date’.
- 11.16 Ratification to expand HMO mandatory licensing as proposed in the Act was

only formally laid before Parliament in February 2018 under The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.

11.17 Conclusion

11.18 With an estimated 500 or more additional HMO properties in the district that, it is anticipated, will be required to be licensed, there is an urgent need for extra staffing resource in Private Sector Housing.

11.19 In order to provide the opportunity for greater use of on-line applications and reduce the administrative burden on PSH, there is a requirement for a dedicated HMO licensing soft ware package to be purchased.

12 OTHER OPTIONS CONSIDERED AND REJECTED

12.1 None

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

None

Other Background Documents:-

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

Private Sector House Condition Report 2015

APPENDICES:

Appendix 1 – HMO licence fee costings template



**HMO LICENSING – CALCULATION OF HMO LICENCE FEE APRIL 2018**

	<b><u>Stages leading to the licensing of a HMO</u></b> <b>(It is assumed that a degree of advice &amp; guidance via either telephone conversations or face to face will be given to assist landlords /agents with making their application)</b>	<b>Average time allowance for each stage of licensing process (Decimal hours)</b>	<b>Average Hourly rate inclusive of on costs for PSH Team</b>	<b>Cost per stage of licensing process (£)</b>
1	Telephone enquiry received from landlord/manager and advice given.	0.25	£40.00	£10.00
2	Licensing information letter/ pack and application form prepared and sent to landlord/manager with covering letter.	0.50	£40.00	£20.00
3	Completed application form received by WCC with fee. Preliminary check carried out to ensure that all necessary enclosures (e.g. gas safety certificate etc.) have been included.	0.25	£40.00	£10.00
4	Cheque paid into cash office. Receipt provided and payment processed.	0.25	£40.00	£10.00
5	Acknowledgement of application letter prepared & sent to applicant. Property file and database updated.	0.25	£40.00	£10.00
6	Detailed assessment to decide whether the application is valid and whether the HMO is suitable to be licensed. Covers checking validity of gas safety certificates/plan etc and whether sufficient detail has been provided within the application. Database updated	0.50	£40.00	£20.00
7	“Fit and proper” determination completed. Check application details/property file to ascertain whether sufficient information provided to establish whether the applicant is a fit and proper person.	0.50	£40.00	£20.00
8	Applicant is a fit and proper person and the HMO is suitable. HMO verification inspection appointment letter prepared and sent.	0.50	£40.00	£20.00
9	HMO verification inspection carried out			

		2.50	£40.00	£100.00
10	Draft proposed licence (and specific conditions) compiled	2.00	£40.00	£80.00
11	HA '04 Intention to grant licence Notice(s) prepared for all interested party(ies)	2.00	£40.00	£80.00
12	Individual "intention to grant" licence letters for all interested parties prepared.	2.00	£40.00	£80.00
13	Proposed draft licence/Notices/ fire schedule/plan and letters sent to interested party(ies).	0.25	£40.00	£10.00
14	Consideration given to any "representation" received from interested party(ies) regarding terms and conditions of proposed draft licence.	1.00	£40.00	£40.00
15	Full HMO licence compiled (with specific conditions)	0.50	£40.00	£20.00
16	HA '04 Granting licence Notice(s) prepared for interested party(ies) and letters (Granting/Pub.reg.)	2.00	£40.00	£80.00
17	HMO licence Public Register compiled	0.75	£40.00	£30.00
18	HMO licence certificate(s)/Notice(s)/Fire schedule/plan/public register and accompanying covering letter(s) sent to interested part(ies)	0.25	£40.00	£10.00
19	Database updated	0.25	£40.00	£10.00
20	Ongoing general cost for scheme management over 5 year term of licence inclusive of consultation with Hants Fire and Rescue Service	6.0	£40.00	£240.00

<b>Basic cost of licence</b>	<b>£900.00</b>
<b>10% Discount for Membership of a National Landlords Association or property already being Accredited with Council</b>	<b>£810.00</b>

