

# **Report title: Additional Licensing - Houses of Multiple Occupation**

Report to: Cabinet

Date of meeting: Tuesday, 19 December 2023

Cabinet Portfolio Holder: Cabinet Member for Regeneration and Housing

Report of: Director of Neighbourhoods

Public or private: Open

Key Decision: Yes – Affects all Wards

Published on the Forward Plan: Yes

## **Report summary**

* 1. This report is to request permission to undertake formal public consultation with a view to implementing a new Additional Licensing scheme for Houses of Multiple Occupation (‘HMOs’) across the Borough for the statutory five year period.
  2. The purpose of implementing an Additional Licensing Scheme (‘the Scheme’) is to work towards raising housing standards across the private rented sector and to allow the Housing Standards team greater powers to enter, search and investigate rental properties in line with a set of published mandatory conditions for each property concerning particularly life-threatening defects within the property. It also requires relevant landlords to be ‘fit and proper person(s)’ meaning they must not have been prosecuted under Housing legislation or committed any relevant offence, such as fraud or acts of violence.
  3. Under the Scheme private landlords who rent out a three or four person small HMO will be required to obtain a licence from the council, subject to any statutory exemptions. The Scheme would last for five years if adopted.
  4. An Additional HMO Licensing scheme will require all HMOs (irrespective of the number of storeys that are occupied) to be licensed. The licence will be issued with licensing conditions which must be adhered to (see Appendix 1).

## **Recommendations**

* 1. That Cabinet approve consultation on the proposal to introduce Additional Licensing of HMOs throughout the Borough, as per the direction in Appendices 1 & 2, to start as soon as is reasonably practicable and in the manner set out below.

## **Reason for recommendation**

* 1. Rochdale Borough has approximately 16,688 households living in private rented property (ONS 2021 Census). The majority of that stock is traditional build older stock, with a high proportion of terraced dwellings which naturally have a far higher rate of disrepair and require higher levels of investment. Typically the level of hazards present are 25% higher in these types of stock (*DA4101 Health & Safety of Dwellings, ONS 2021*).
  2. Over the past 5 years the amount of private tenant complaints dealt with by the Council’s Housing Standards team has risen from 279 to 518 across all property types. A significant proportion of these are from HMO properties where mandatory licensing does not apply, but which would be captured by Additional Licensing and conditions. Typically HMO tenants are often the most vulnerable members of society and are less likely to engage of their own volition.
  3. At law the Authority must consider that a significant proportion of the HMOs which would be licensable under an Additional Licensing Scheme 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.
  4. Since the last Additional Licensing Scheme in Rochdale ended there has been a 46% rise in private tenant complaints, with increased public concern relating to the rise in HMOs within the Borough, and as experienced in rising member casework. (Further particularisation of the evidence base is given in Appendix 1).
  5. The English Housing Survey (EHS) estimated that in 2021 23% of homes in the private rented sector did not meet the Decent Home Standard, compared to 13% of owner-occupier and 10% of social rented homes. The need to raise housing standards is considerable.
  6. In bringing more properties under the management standards as applied by the *Management of Housing in Multiple Occupation (England) Regulations 2006* extra duties are placed on the property manager to maintain facilities and services, and carry out other measures to ensure the occupants are safe.
  7. It is recommended to Cabinet that a statutory consultation is undertaken as a necessary information gathering exercise and precursor to consideration of the implementation of Additional Licensing as an extension of enforcement tools.
  8. In line with the legal requirements (see below) the consultation will be conducted in two stages. The first stage will comprise of an informal non-statutory consultation, which will then be followed by a formal statutory consultation which will run for a minimum of 10 weeks.
  9. **Non-Statutory Consultation:** This will be for a period of 8 weeks where the Council as the Local Housing Authority (LHA) will engage with private sector landlords, managing agents and associations that either support landlord or have an interest in private landlord affairs, to determine the level of support for the LHA’s proposals. Information about the proposed designation and its costs will be made available on the Council’s website, a postal survey will be undertaken and hosting of a workshop at a Landlord Forum event with landlords and agents to obtain feedback on proposals.
  10. **Statutory Consultation:** Following the first stage consultation a further ten week minimum period of formal consultation about the proposals will be held, targeting both those within the Borough and those outside of the Borough who have an interest in it (for example those who operate businesses or provide services in the surrounding area). Similar consultative communication methods adopted at stage 1 will be utilised, including the use of social and formal media and advertisements.

## **Alternatives considered**

* 1. The alternative decision open to Cabinet is not to consult, not to consider implementing Additional Licensing and not to utilise the full range of enforcement powers available to the Authority to resolve much needed housing standards issues within the Borough.
  2. Practical alternatives to Additional Licensing must be considered with regard to s.57 (4) of the Housing Act 2004 (‘the Act’) as a Local Housing Authority may not make a designation to implement Additional Licensing unless i) it has considered whether there are any other courses of action available (of whatever nature) that might provide an effective method of dealing with the problem or problems in question and ii) it considers 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).
  3. The alternatives to implementation of Additional Licensing would principally be to introduce Selective Licensing either as a stand-alone tool or in concert with Additional Licensing; pursue Civil Penalties for breaches of legislation and regulation (further detail is contained in Appendix 1).
  4. A civil penalty can be issued as an alternative to prosecution for each separate breach of the Houses in Multiple Occupation management regulations. A civil penalty can only be imposed as an alternate to prosecution, and is currently used by the Council in line with published policies. However, it is a reactive enforcement tool which principally deals with after-the-event issues retroactively dealing with housing standards rather than setting of standards in advance and allowing consequent investigation where required.
  5. Selective Licensing can apply to any rented property within a set area, whereas mandatory and additional licensing only apply to houses in multiple occupation. Selective licensing may only be granted if the area meets one or more conditions (such as low housing demand, significant and persistent ASB, poor housing conditions, high levels of migration, crime or deprivation).
  6. Selective Licensing applying to any rented property is judged to place an unnecessarily high burden on all landlords in Rochdale. The rationale for pursuing Additional Licensing is specifically to target HMO rental properties where risk to inhabitants is typically significantly higher than single household rentals.
  7. HMOs that are poorly managed and badly maintained can put an extra burden on local services and have a negative impact on the area, as well as potentially posing safety risks to inhabitants. That is why additional considerations apply to the management, maintenance and construction of HMOs.
  8. Significantly Additional Licensing will bring more properties under the regulatory and investigative abilities of the Council, as currently without Additional Licensing powers of investigation and entry are inhibited. Selective Licensing on its own would not afford the same ability to investigate, monitor and regulate the specific cohort of HMOs as a particularised housing type.
  9. Selective Licensing does not target the problems identified (see Appendix 1) in the same way that Additional Licensing would and creating an administrative burden to licence all properties within a given area would create unachievable capacity demands for the service and place an unnecessary burden on landlords.
  10. The Council believe that introduction Additional HMO Licensing will help to i) improve property conditions within these HMOs ii) improvement management standards and iii) ensure residents will be afforded the same protection as people in mandatory licensed HMOs.
  11. The Council would expect benefits of an HMO-targeted Additional Licence scheme to include:
  + As with mandatory licensing, additional licensing will bring a significant number of properties to the Council’s attention that would otherwise have gone undetected. The use of civil penalties only would not allow for this, neither does it place a legal duty on landlords being “*fit and proper persons*”.
  + A wider understanding from HMO landlords and agents of expected management standards, which would not be achieved through use of civil penalties alone which is a far more reactive enforcement measure.
  + Diligent private landlords would benefit from not having to compete with poorly managed properties that do not meet the standards.
  + Licensing will require absentee or unprofessional landlords to employ a professional management approach to actively manage their properties and ensure suitable arrangements are in place to deal with any problems that arise.
  + Improved management and improved conditions of privately rented accommodation will provide quality and choice for residents.
  + The better protection of the health, safety and welfare of tenants through improved safety standards within the HMO.
  + A reduction in the negative impacts for tenants of HMOs.
  + Reduction in the negative impacts from HMOs that will benefit the whole community (unlike Selective Licencing which would not be Boroughwide).

## **Key information**

5.1 The main information relating to the recommendation to consult and explanation of how an Additional Licensing scheme must operate and could be rolled out are contained within Appendices 1 and 2.

## **Finance**

* 1. There are no significant financial implications arising from any decision to consult. Financial implications of designation and adoption would principally be the charging of License fees (circa £1,000 for a 5 year period) which are statutorily required to be re-invested in housing standards within the Borough.
  2. Strategic Housing has been successful in obtaining grant monies of £74,491 from GMCA to enable additional capacity through recruitment to a fixed term position, with principal but not exclusive duties being to consult, implement and manage the day-to-day operations of the Additional Licensing scheme.

## **Legal**

* 1. The Housing Act 2004 (‘the Act’) allows for the designation of the whole or part of the area of the district to be subject to additional licensing in relation to HMOs (section 56 (1) of the Act).
  2. The authority must consider that a significant proportion of the HMOs are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more problems for those occupying the HMO or the public (as per s.56 (2) of the Act).

***Consultation***

* 1. Before making a designation the Council must take ‘*reasonable steps to consult*’ and to ‘*consider any representations* […]’ (s.56 (3) of the Act).
  2. In forming an opinion as to whether a significant proportion of HMOs are being managed sufficiently ineffective (as per s.2 of the Act) the Council must have regard to ‘*any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question*’ (s.56 (6) of the Act).

***Legal Procedural Requirements***

* 1. The overriding consideration is procedural fairness which includes adhering to the long-acknowledged ‘*Sedley criteria*’ as per *R v Brent LBC, ex parte Gunning* (1985) 84 LGR 168 and subsequently endorsed by the Supreme Court in 2014.
  2. The Sedley criteria prescribe that LHAs:
  + Consult at a time when their proposals are still at a formative stage;
  + Give sufficient reason for their proposals, to enable intelligent consideration and response;
  + Allow adequate time for consideration and response; and
  + Take responses into account conscientiously when finalising their proposals.
  1. If the Council were to adopt Additional Licensing following the proposed consultation then designation by future Cabinet would not take effect until a date no earlier than three months after the date on which the designation [by Cabinet] is made (as per s.58 (8) of the Act).
  2. Any such designation would need to be confirmed by the ‘appropriate national authority’ or if it falls within a description for general approval (as allowed for by s.58 (1) and as per s.58 (6) of the Act).
  3. To use the general consent the consultation period must run for a minimum of 10 weeks (as per s.56 (3) (a) of the Act and the *Licensing of Housing in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015*, para.5).
  4. As soon as the designation is confirmed or made prescribed information must publish certain prescribed information (as per section 59 (2) of the Act) and following Notice ensure public availability of information following the prescribed requirements (as per s.59 (3) of the Act).

***Policy Requirements***

* 1. The Council must also ensure consistency with the council’s overall housing strategy, co-ordination with homelessness, empty properties and anti-social behaviour affecting the private rented sector both combining licensing with other courses of action available and with measures taken by other persons (s.57 (3) of the Act).
  2. The Council must not make a particular designation unless it has considered other courses of action available that might provide an effective method of dealing with the problem or problems in question and that it considered the designation will significantly assist it to deal with the problem.

***Duration & Review of Designations***

* 1. Unless previously revoked the designation ceases to have effect at a time no later than five years after the date on which the designation comes into force (s.60 of the Act).

## **Human resource**

* 1. The initial increase in capacity would be met by an additional appointment, funded for the first two years by GMCA grant monies (as detailed above).

## **Sustainability impact**

* 1. Initial modelling on the impact of the proposed changes has taken place to inform the approach. A sustainability assessment has been started and will continue to be updated through the development process.

## **Other considerations (corporate priorities, risks)**

* 1. All legal considerations pertaining to the recommendation to consult have been adhered to.

**Background Papers:**

Appendix 1: Consultation Proposal v.2.0

Appendix 2: Additional Licensing Questionnaire DRAFT

Appendix 3: Sustainability Report

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