

MAYOR AND CABINET			
Title	Private Rented Sector: Additional Licensing Scheme for Houses in Multiple Occupation above commercial premises		
Key decision	Yes	Item no	
Wards	All		
Contributors	Executive Director of Customer Services		
Class	Part 1	9 November 2016	

1 Purpose

- 1.1 The purpose of this report is to clarify the discrepancy between the title of the report that was presented to Mayor and Cabinet on 2 March 2016; specifically, the title and the contents of paragraph 1.1, both of which included the term “and below” commercial premises and the subsequent recommendations which were approved which only included those “above” commercial premises. This will protect the Council against potential legal challenge.

2 Background

- 2.1 The overarching aim of the scheme of additional licensing throughout the borough is to generally improve the standards in the private rented sector and extend the principles already in use through the mandatory licensing scheme so as to improve fire safety, repair and management standards in order that properties comply with legal minimum standards required in the private rented market.
- 2.2 On 2 March 2016 Mayor and Cabinet received a business case to introduce the “additional” licensing scheme which was agreed at that meeting. (Appendix 1) <http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=139&MId=3868&Ver=4>
- 2.3 On 22 March 2016 Licensing Supplementary Committee approved the fees to be applied to the scheme. (Appendix 2) <http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=170&MId=3826&Ver=4>
- 2.4 Following the subsequent implementation of the original plan there have been several enquiries and clarifications sought from a variety of stakeholders including some Landlords, Landlord Associations, Letting Agents and other London Boroughs on the stated designation of properties to be licensed under the scheme. Without full clarification the Council may be open to legal challenge.

- 2.5 In light of this, officers wish to clarify the types of properties to which the designation order will apply, namely, only those Houses in Multiple Occupation (HMOs) above commercial premises shall be captured in this designation.
- 2.6 This will require a further statutory publication as the original Public Notice incorrectly included HMOs below commercial premises.

3 Recommendation

- 3.1 It is recommended that the Mayor:
- 3.2 Confirms the designation of an additional licensing scheme for Houses in Multiple Occupation (HMOs) so as to include those which are above commercial premises in the whole of the Council's area using the power set out in Section 56 (1) of the Housing Act 2004.
- 3.3 Delegates to the Executive Director for Customer Services to publish the 3 month Statutory Notices for the scheme as part of the statutory implementation demands.
- 3.4 Agree that the Executive Director for Customer Services, with the relevant portfolio holder, be authorised to review the scheme, its implementation and resourcing and make amendments as necessary so as to ensure the principles of the scheme are achieved.
- 3.5 Note the change in fine levels applicable to the scheme.

4 Policy context

- 4.1 The housing landscape is rapidly changing and demand is increasing across all tenures. The private rented sector in Lewisham is growing rapidly – having doubled in size since 2001 it now consists of more than 30,000 units and makes up more than 25% of all households. This is consistent with the trend across London where the growth in private renting over the decade to 2011 constitutes a 65.5% increase, or an additional 341,000 households.
- 4.2 Despite the increasing costs of private renting, the sector is expected to grow further in Lewisham to a level comparable with or even in excess of the social rented sector which is 31% based on 2011 census data. This is due in part to the relative unaffordability of home ownership as a result of rapidly increasing house prices, the large numbers of households on the housing waiting list (9381 households as of September 2016) and relatively low levels of social rented lets, all of which when combined means that Lewisham residents are more reliant on the private rented sector than ever before. The council recognises this and

continues to act creatively by developing relationships and working in close partnership with private landlords to drive up standards and offer longer term tenancies, thereby ensuring residents have more choice. This is especially pertinent given that private renting remains the only option for many low income households and those in need.

- 4.3 A series of reports to Housing Select Committee and Mayor and Cabinet between December 2014 and July 2015 explained the options and evidence for licensing. The findings showed that the poorest standards, conditions, hazards and services in the private rented sector are to be found in properties over commercial properties.
- 4.4 Based on these findings, it was concluded that an “additional” licensing scheme for HMOs above commercial premises:
- Will help deliver the housing authority’s strategic private sector housing policies;
 - Is founded on quantitative evidence of problems created by poor private sector housing management;
 - Is founded on evidence that licensing will sustainably assist with addressing the problem;
 - Is the best solution to address the problem;
 - Must operate for no more than five years and must be kept under review; if the exercise has achieved its objectives, it should be discontinued.

5 Government changes since consultation initiated

- 5.1 It should be noted that recent changes in legislation now mean that the fine level for the operation of an unlicensed HMO has changed from a maximum of £20,000 to an unlimited fine.

6 Lewisham’s consultation process

- 6.1 The council followed the statutory requirements for consultation on its proposed additional licensing scheme and these are detailed in the report of 2 March 2016.

7 Next steps

- 7.1 The decision of the Mayor to approve the designation needs to be given effect by means of adherence to Statutory Timescales. This requires the republication of Public Notices to comply with the prescribed regulations.
- 7.2 A detailed project plan for implementation has been prepared incorporating the publication of a Statutory Notice for a required 3 months period along with the measures needed to comply with the other requirements of the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006.

8 Financial implications

- 8.1 The Council is required to set a licensing fee that covers the cost of the licensing element of the service.
- 8.2 To that end, the costs of additional licensing are budgeted to be fully covered by the £500 fee approved on 22 March 2016 by the Licensing Supplementary Committee, after taking into account the application of discounts and maximum fees.
- 8.3 An additional budget of £1m spread over the five years of the scheme was approved as part of the budget setting process for 2016/17 to cover the cost of enforcement activities relating to the scheme

9 Legal Implications

- 9.1 Pursuant to s. 56(1) of the Housing Act 2004 (“HA 2004”), “a local housing authority may designate either (a) the area of their district, or (b) an area in their district, as subject to additional licensing” in relation to HMOs specified in the designation.
- 9.2 The proposed designation must be consistent with the authority’s overall housing strategy. (s. 57 HA 2004.)
- 9.3 As soon as the designation is made by the local housing authority, the authority must publish it in accordance with the provisions of s. 59 HA 2004 and the authority is obliged to review the operation of the designation.
- 9.4 HMOs for the purposes of s. 56 of the HA 2004 are widely defined (in accordance with the provisions of s. 254(1) HA 2004), as a building or part of a building if it meets any one of the following conditions and described in the HA 2004 as being “ the standard test”,(defined fully within s. 254(2)HA 2004) or ‘the self-contained flat test’, (defined fully within s. 254(3) HA 2004) ‘the converted building test’, (defined fully within s. 254(4) HA 2004, or a ‘converted block of flats’(pursuant to s. 257 HA 2004).
- 9.5 The local housing authority pursuant to s. 63 of the HA 2004 has the power to impose a requirement for applicants for these licences to pay a fee. When fixing fees, the local housing authority may take into account all costs incurred by them in carrying out their related functions.
- 9.6 The European Convention on Human Rights states in Article 8 that “Everyone has the right to respect for his private and family life, his home and correspondence”. The Human Rights Act 1998 incorporates the Convention. Whilst it does not, however, necessarily mean that everyone has an immediate *right* to a home, (because Article 8 is a “qualified” right and therefore is capable in certain circumstances, of being lawfully and legitimately interfered with,) the provision by an Authority of a relevant scheme such as an HMO additional licensing scheme does assist to reinforce the Article 8 principles

- 9.7 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.8 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 9.9 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 9.8 above.
- 9.10 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 9.11 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>
- <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>
- 9.12 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

9.13 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:
<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

10 Crime and disorder implications

10.1 No specific crime and disorder implications have been identified as arising from this report

11 Equalities implications

11.1 An Equalities Analysis Assessment has been carried.

12 Environmental implications

12.1 No specific environmental implications have been identified as arising from this report.

13 Background documents and report originator

Appendix 1: Mayor and Cabinet report dated 2 March 2016: Private Rented Sector: Proposed Additional Licensing Scheme for Houses in Multiple Occupation above/below commercial premises

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=139&MId=3868&Ver=4>

Appendix 2: Licensing Supplementary Committee report dated 22 March 2016 approval of fees

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=170&MId=3826&Ver=4>

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