

MAYOR AND CABINET			
Title	Private Rented Sector: Proposed Additional Licensing Scheme for Houses in Multiple Occupation above/below commercial premises		
Key decision	Yes	Item no	
Wards	All		
Contributors	Executive Director Customer Services		
Class	Part 1	2 March 2016	

1 Purpose

- 1.1 This report seeks approval to extend the principles of the mandatory licensing scheme currently operated by the London Borough of Lewisham, through the introduction of an additional licensing scheme to Houses in Multiple Occupation (“HMO”s) above or below commercial premises as defined by the Housing Act 2004. Housing Bill

2 Background

- 2.1 The overarching aim of the scheme of additional licensing throughout the Borough will be to 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 15 July 2015 Mayor and Cabinet received a business case to introduce the “additional” licensing scheme which was accepted in principle and officers were asked to undertake statutory public consultation on the proposals as presented, in line with the current statutory requirements and to report back the findings of the consultation later in the year.
- 2.3 On the 1 December 2015 the case for introducing “additional licensing” was considered and supported by the Housing Select Committee.
- 2.4 The Housing Act 2004 provides a definition of a ‘house in multiple occupation’ to include:
- Shared houses where people live as a group but are not a family group
 - Traditional bedsit type houses where tenants have their own room or rooms but share something like a bathroom or kitchen
 - Houses occupied by the owner (residential landlord) plus two or more

lodges or house shares

- Mixtures of rooms and flats in a house – as long as there is some sharing
- Flats that are let out to some sharers, 3 or more
- Hostels, projects and other residential uses that involve adults sharing living space (but not if the property is owned or managed by a Registered Social landlord)
- Houses converted into self-contained flats where they do not meet the requirements of the 1991 Building Regulations, and at least one third of the flats are occupied under short hold tenancies.

2.5 The full definition can be found in the Housing Act 2004, sections 254 to 260 and schedule 114.

3 Recommendations

It is recommended that the Mayor:

- 3.1 Approves the designation of an additional licensing scheme for Houses in Multiple Occupation (HMOs) 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.
- 3.2 Note the statutory consultation undertaken on the proposed Additional Licensing scheme as required by Section 56 (3) of the Housing Act 2004.
- 3.3 Note that the proposed fee for Licenses will be put to Supplementary Licensing Committee for approval. The fee level being recommended for both the new additional licensing scheme and mandatory licences will be £500 "per let unit" over the five year term. A maximum threshold of £5000 for each property is proposed where there are 10 lettings or more per landlord, subject to discounts as set out in section 12.
- 3.4 Agree to the principle of the publication of an online register of landlords who are licensed by the Council
- 3.5 Delegate to the Executive Director for Customer Services to prepare a detailed project plan for implementation beginning May 2016 and publish the 3 month Statutory Notice for the scheme as part of the implementation
- 3.6 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.

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 (9,253 households as of January 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 There are additional measures relating to the regulation of the Private Rented Section in the Housing and Planning Bill which is currently before Parliament. It also carried out a consultation on extending mandatory licensing and is currently considering the responses.

6 Lewisham’s Consultation process

- 6.1 The council followed the statutory requirements for consultation on its proposed additional licensing scheme which included the following elements:

- Consultation document and on-line survey on Lewisham website for 12 weeks from 1st September to 24th November (10 weeks statutory min);
- Mail shot of over 4000 letters to all addresses with combination of commercial and residential, with invitation to public meeting, summary of the proposal and link to website;
- Public meeting 15th September 40 attendees;
- Emails to subscribers to Lewisham Life magazine with links to the consultation document on the council website;
- A written briefing note to Ward Assembly meetings;
- Details of the proposed scheme sent to organisations including the National Landlord Association, the Residential Landlords Association, Generation Rent, London Property Licensing.co.uk and neighbouring boroughs to publicise via their websites.
- Hard copies of the proposal and consultation available at Laurence House Customer Access Point;

6.2 Responses received are set out in detail in Appendix I. In summary there were:

- 136 on-line responses
- Four detailed responses from organisations (NLA, CAB, LB Lambeth and RLA)
- The majority of responses came from residents of the borough, the following key characteristics were;
Largest group of respondents were owner-occupiers, about 40% of whom were private landlords
- Slightly more of the respondents were private tenants than private landlords (56% vs. 44%)
- More than half the landlords let only one property, only 3% have portfolios over 10 properties

7 Views expressed

7.1 The consultation focused on 5 key areas set out below. The purpose of this type of licensing is to protect the interests of private tenants. Whilst the opinions of private landlords are very important both landlord and tenant opinion must be considered carefully. In all similar licensing consultations it is generally the case that tenants have an interest in licensing whilst private landlord opinion is likely to be at best mixed; historically landlord representative bodies have positioned themselves in opposition to greater regulation.

7.2 The headlines from the responses, analysed by landlords and tenants show a high degree of consensus on general principles, with increasing differentiation between landlords on the one hand and tenants on the other, following the predictable lines set out in paragraph 7.1 above:

7.3 “More properties for private rent should be licensed”: this question showed the strongest positive agreement and biggest consensus; this included a quarter of the private landlords. No private landlords disagreed with the statement

7.4 “Licensing improves conditions”: a large majority agreed with this statement,

including just under a third of private landlords, though 21% disagreed with the statement

- 7.5 “It is right to target flats (HMOs) above commercial premises” 60% agreed though private landlords were divided on the question with only one quarter of them agreeing. 90 % of tenants were in agreement
- 7.6 Proposed standards to be met for a license: a small majority felt standards proposed are about right, but 28% who were overwhelmingly private tenants, felt the standards were not tough enough. Just under half of landlords considered them too tough.
- 7.7 On the proposed fee of £100- £110 pa (£500 for a five year license) : opinion was most divided on this question; a small majority favoured the fee being at least the proposed sum but more than two thirds of landlords thought the fee too high

8 Qualitative feedback, suggestions and challenges posed:

- 8.1 Qualitative feedback was received from the following organisations:
- 8.2 The National Landlord’s Association branch in Greenwich and Lewisham were strongly in support of the scheme and see this as a positive opportunity to campaign for more small landlords to gain accreditation;
- 8.3 CAB – the CAB nationally strongly support extending licensing to more of the private rented sector; the local branch have a small research team who have been studying problems in the private rented sector and told us that there was no evidence of more people from over shops complaining;.
- 8.4 The following suggestions were made and will be incorporated into the scheme:
- The scheme should refer to use of Interim Management Orders
 - The Council should impose specific higher limits on size of bedsits if cooking facilities are included and stipulate minimum refrigerator size
 - The Council should require annual inspections by qualified surveyors
 - Tenant accreditation should be offered to those who can’t get a reference
 - Set out which bodies are accepted for landlord accreditation
 - HMOs below shops should also be included
- 8.5 Other suggestions received were impermissible under the Housing Act 2004.

9 Consultation Summary

- 9.1 Even allowing for the differing interests of private landlords and tenants, the overall opinion is strongly in favour of extending private sector licensing and broad agreement that HMOs over commercial premises is the target for additional licensing in the borough.
- 9.2 Private landlords tend to the view that our proposed license conditions are a bit

too tough and the proposed fee too high, whilst private tenants expressed a stronger view the conditions were not tough enough and the fee too low; the overall opinion has a majority opinion that conditions are about right or not tough enough and the fee about right or too low.

- 9.3 Those respondents who wanted tougher license conditions identified a number of additional conditions which are listed under paragraph 8.4 above. It is recommended to incorporate all the conditions in this list that are permissible. The non-permissible items are variously expressly excluded by the Housing Act 2004, Part 2, such as council tax regulations and court fines for licensing offences are not controlled by the council. The proposed scheme will however incorporate the permissible items, subject to the agreement of Mayor and Cabinet.

10 Conclusion

- All aspects of the proposals were supported by a majority of respondents
- The survey captured the opinions of both landlords and tenants; landlords were more negative about the proposals while tenants were strongly supportive
- Landlords did not disagree with the principle of licensing
- Just under half of the landlords considered the proposed standards too tough, and only one third agreed licensing improves standards
- Less than a third of landlords were in support of the proposed fee
- Only a quarter of landlords agreed with licensing HMOs over commercial premises.
- Therefore feedback was broadly in agreement with the principles and framework of the proposed scheme and so the recommendation to Mayor & Cabinet has been made here to take forward the additional licensing of HMOs over commercial property across the Borough.

11 Next steps

- 11.1 A detailed project plan for implementation will be developed incorporating the publication of a Statutory Notice for a required 3 month period.
- 11.2 During this 3 month Notice period the new staffing structure for the combined Environmental Health and Grants Standards and Enforcement Agency will be rolled out to lead the work on the additional licensing scheme implementation, if approval obtained, supported by improved ICT technology to support online applications.
- 11.3 A programme of inspections of the estimated 1800 properties/4200 "lettings" or units will start the process and provide an in depth assessment of the

conditions of the properties as well as confirm the details of the actual numbers of lettings and licences that will form the basis of the additional licensing scheme.

12 Licence Fee level

- 12.1 The current mandatory licensing fee is £180 “per letting”, up to a maximum of £1800 per property, every 5 years. There is a discount for second and any subsequent HMO license fee applications from the same landlord for other properties under their ownership of £120 per unit with a maximum fee of £1200. A discount of 20% is available for all landlords accredited through the London Landlord Accreditation scheme (LLAS) or where they are members of a recognised Landlord Association. Registered charities receive a further 50% discount on current fees. It is proposed to increase the mandatory fee level in line with the ‘additional’ licensing fee for all new mandatory license applications.
- 12.2 The proposed new fee level is £500 per letting. The fee has been set to cover all of the administrative costs associated with the licensing process. There will be a similar discount for landlords of more than one property and registered charities as with the existing scheme and a maximum fee level of £5000 per property over 5 years.

13 Financial implications

- 13.1 The Council’s current budget includes a budget of £0.74m for licensing and environmental health in the strategic housing division.
- 13.2 The Mayor and Cabinet report of 15 July 2015 indicated that the cost of the service would be up to £2.4m over five years, based on the estimated costs of a new stand-alone service. Since then, more accurate estimates have been obtained and some costs have been integrated into existing budgets, such as corporate overheads and some staffing expenditure. This has reduced the requirement for additional budget to £1m over five years.
- 13.3 Funding for the additional £1m has been identified as a part of the budget setting process for 2016/17 and beyond.
- 13.4 The Council is required to set a licensing fee that covers no more than the cost of the licensing element of the service. The fee cannot contribute to the cost of the enforcement elements of the service. Current estimates indicate that a fee of £500 per letting would achieve this requirement.

14 Legal Implications

- 14.1 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.
- 14.2 The proposed designation must be consistent with the authority’s overall

housing strategy. (s. 57 HA 2004.)

- 14.3 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.
- 14.4 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).
- 14.5 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.
- 14.6 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
- 14.7 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 14.8 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.
- 14.9 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 14.10 The Equality and Human Rights Commission has recently 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: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

14.11 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

14.12 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: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

15 Crime and disorder implications

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

16 Equalities implications

16.1 An Equalities Analysis Assessment has been carried out and is attached at Appendix 2.

17 Environmental implications

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

18 Background Documents and Report Originator

- Appendix 1: Consultation Report – Additional Licensing Scheme For Private Rented Sector Properties

- Appendix 2: Equalities Assessment Analysis

18.1 If you require further information about this report please contact Madeleine Jeffery on 020 8314 9484 or Antoinette Stasaitis on 0208 314 9340.