

18 March 2021

Executive

Report of the Interim Director of Place

Portfolio of the Executive Member for Housing and Safer Neighbourhoods

Consultation on Additional Licensing Scheme for Houses in Multiple Occupation (HMO)

Summary

- 1 This report sets out the proposal to undertake public consultation on improving the quality and energy efficiency of rented accommodation in the city by expanding the current scheme for licensing Houses in Multiple Occupation (HMOs) to those with 3 or 4 occupants within targeted wards where there is most evidence of both poor housing conditions and issues of poor management.
- 2 The licensing process has proved effective in driving up quality in larger HMOs and has given us a robust evidence base to support the extension of that scheme to smaller properties where voluntary schemes have failed to have the desired impact.
- 3 The quality of the home we live in makes a significant difference to our lives. Evidence suggests that poor quality homes will negatively affect our mental and physical health, wellbeing, educational attainment and career. At their worst, our homes can also present a danger to our health and safety.
- 4 The provision of good quality housing for our residents is one of our key priorities. Evidence suggests that residents living within the private rented sector (PRS) experience the worst quality housing in the city. HMOs are of particular concern with over 3000 within the city and only one third regulated through licensing.
- 5 It is recognised that there are many good quality landlords operating in the city. Unfortunately there are also landlords who do not maintain their

properties to a high standard, leaving residents in poorly maintained homes which can create risks around health and safety.

- 6 Under the Housing Act 2004, the Government have provided councils with powers to tackle poor quality HMOs in the PRS sector through Mandatory Licensing. This applies to HMOs that have 5 or more occupants from two or more households. There are approximately 1000 licensed HMOs in York. This licensing regime operates alongside the ambitions within our planning policies which aims to control the spatial distribution of HMO's to ensure we maintain mixed and balanced communities.
- 7 Approximately 2000 HMO's in York contain 3 or 4 occupants from 2 or more households. At present these homes do not require a license to operate. Evidence presented in this report highlights that many of these HMOs are poorly managed and maintained, resulting in poor housing conditions for the residents A targeted additional HMO licensing scheme seeks through a proactive approach to raise standards in the sector in the poorest performing wards not only to ensure safe homes but to also improve the mental and physical wellbeing of the occupants.
8. At a pre-decision meeting of the Housing and Safer Communities Scrutiny Committee, on the 16th February 2021, Members considered a report and were fully supportive of the officer's recommendation to carry out a 10 week statutory consultation to potentially designate a targeted additional licensing regime based on the full evidence attached in Annex A

Recommendations:

9. Executive are recommended to:
 - a) Agree to undertake a citywide, statutory, 10 week consultation on the potential designation of a targeted Additional Licensing scheme for HMO's with 3 or 4 occupants within the wards of Hull Road, Guildhall, Clifton, Fishergate, Heworth, Micklegate, Osbaldwick and Derwent; and Fulford and Heslington
 - b) Support a further report being brought before Executive following the conclusion of the consultation to determine whether to designate an additional licensing scheme.

Reason: To seek to improve HMOs and thereby benefiting:

- tenants by ensuring that homes which are safe and well managed,

- create a level playing field for all Landlords/agents
- support stakeholders such as the Fire and Rescue Service, Police and NHS by improving fire safety, security and reducing the number of unhealthy homes.
- support our universities and other educational institutions attract students
- support the wider city businesses and residents by providing well managed and sustainable housing

Background

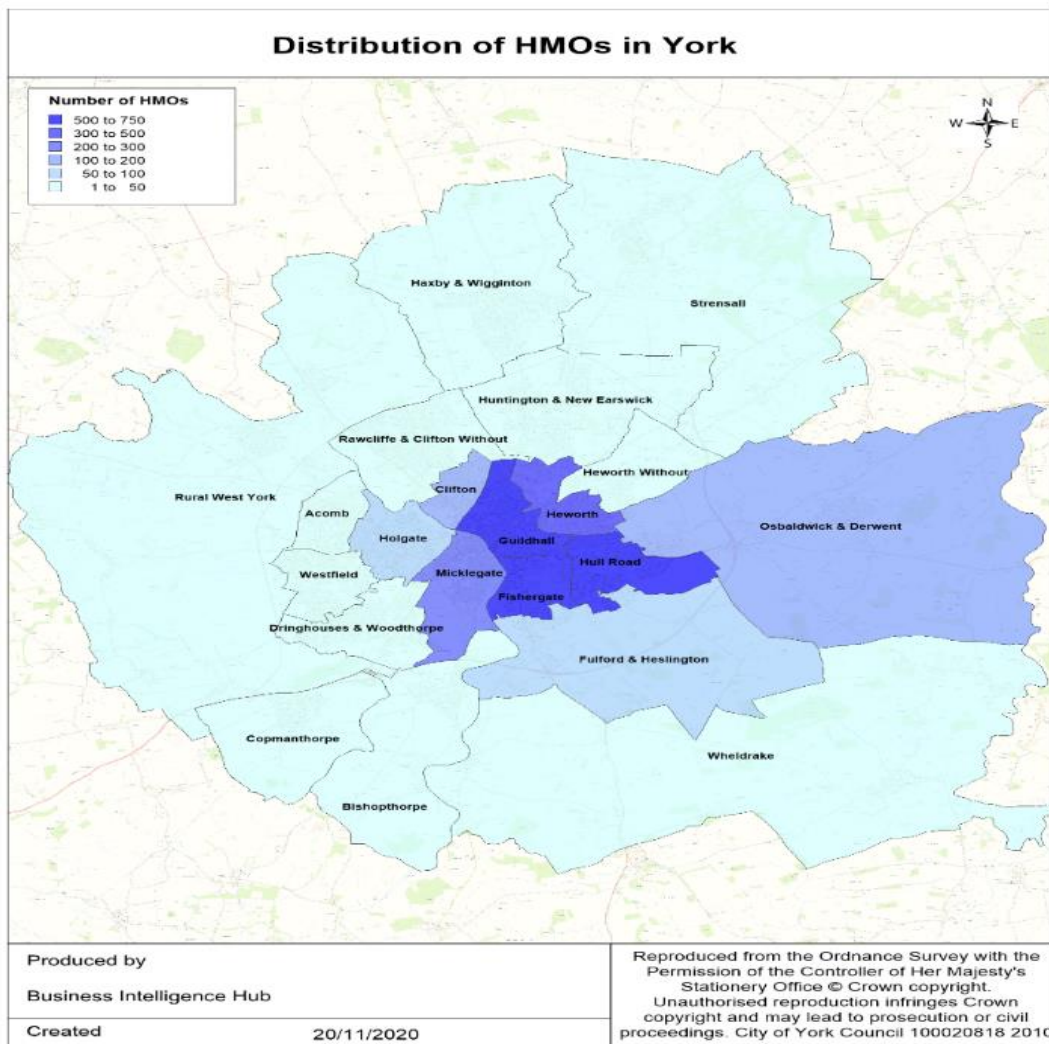
10. This work responds to the Council Plan 2019-23, which states that we will ‘Investigate the case to extend HMO licensing to smaller HMOs and work with partners to maximise energy efficiency in private sector housing.’ HMOs are properties that are occupied by a least 3 different tenants, forming more than 1 household whereby the tenants share facilities such as cooking or sanitary facilities. The definition of a HMO includes bedsits, shared houses, and flats, lettings with their own facilities but which are not self- contained, and some types of converted self-contained flats.
11. Our Private Sector Housing Strategy 2016-2021, developed using the Building Research Establishment¹ evidence base, highlighted issues within the private rented sector generally in the city, with particular concerns raised about conditions in HMOs.
12. The Housing Act 2004 provides the power to the council to introduce an Additional HMO Licensing Scheme. The power is intended to address the impact of poor quality HMOs that fall outside of the national licensing HMO scheme and address management issues and poor property conditions. The 2004 Act also requires authorities considering designating an area subject to Additional Licensing to:
 - A) take reasonable steps to consult persons who are likely to be affected by the designation; and
 - B) consider any representations made in accordance with the consultation
13. Annex A provides the full evidence base for re the standard of HMOs within the city but critically the main issues are:

¹ ¹ Building Research Establishment – The condition of private housing in York – BRE Integrated Dwelling Level Housing Stock Modelling and Database Dec 2015

- The numbers and distribution of HMOs in the city in the wards with older properties
- Poor Property and management conditions in such properties, evidence drawn from including Energy Performance Certificate Data and Housing Health and Safety Rating System Data
- Poor property and management conditions were found in HMOs during the extension of HMO licensing in 2018

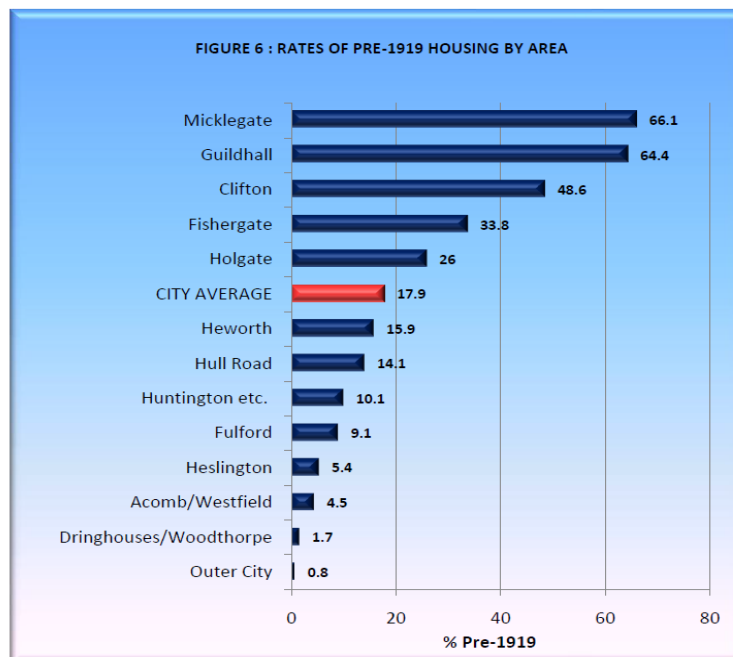
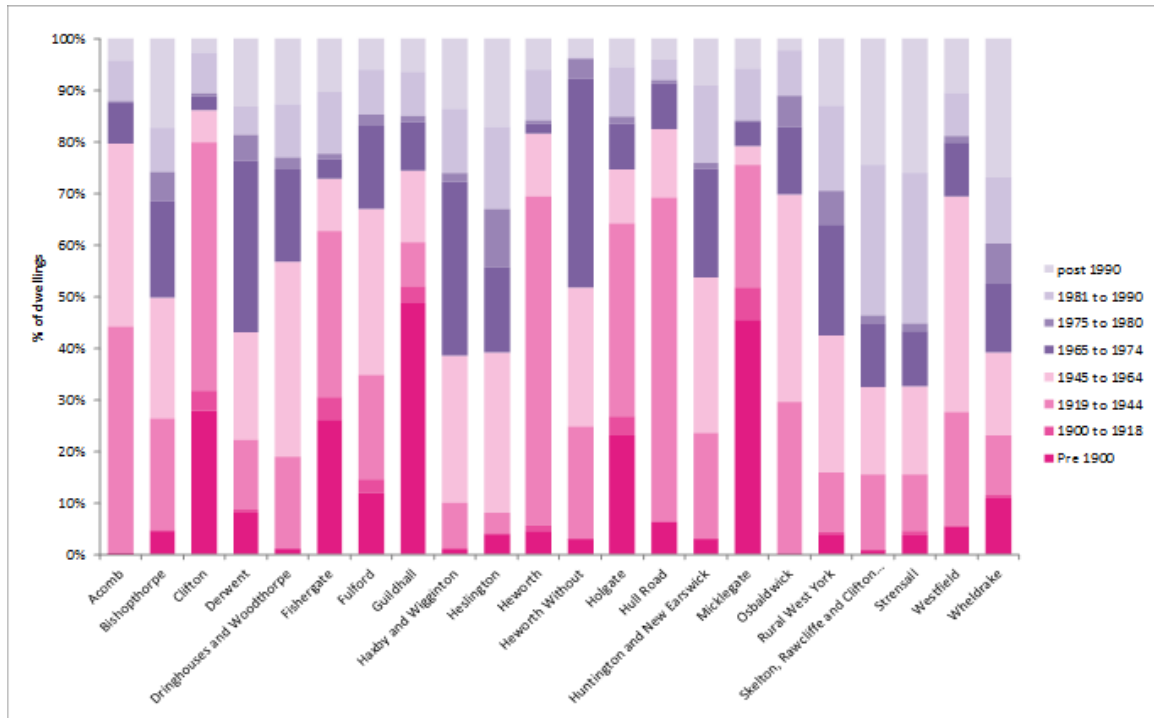
14. Numbers and distribution of HMOs in York

Planning data highlights that there are over 3,000 HMOs in York, not including university halls of residence. The hotspot density map below highlights that the largest concentrations of HMOs are within wards in close proximity to the city centre and the two major universities.



15. Poor Property and Management Conditions

The figures below provide relevant information regarding the stock and conditions in the PRS as reported in the 2015² assessment of housing conditions in York. The age of dwellings in the PRS is an important consideration, with the worst conditions typically present in older housing stock types. The graphs below highlights the dwelling age profile by ward. Typically the wards with the highest concentrations of HMO's also have high numbers of homes built before 1919.



² Building Research Establishment – The condition of private housing in York – BRE Integrated Dwelling Level Housing Stock Modelling and Database Dec 2015

16. Energy Performance

Analysis of Energy Performance Certificate (EPC) data provides strong evidence that licensing improves the energy performance of properties. Unlicensed HMOs are more likely to have no EPC, lower performing EPC ratings or expired EPCs. Poor performing properties leads to cold homes which are hard to heat and prone to dampness and mould.

EPC data for licenced and un-licenced HMOs

EPC Rating (incl. expired EPCs)	Unlicensed	Licensed	Total HMOs
A	3		3
B	108	16	124
C	642	395	1037
D	935	476	1411
E	210	97	307
F	13	4	17
G	6	3	9
No EPC	136	18	154
Ambiguous Address	9	6	15
Total	2062	1015	3077
% of properties with no EPC	6.60%	1.77%	5.00%
% of properties with F or G rating	0.92%	0.69%	0.84%
% of properties with expired EPC	13.77%	9.26%	12.28%

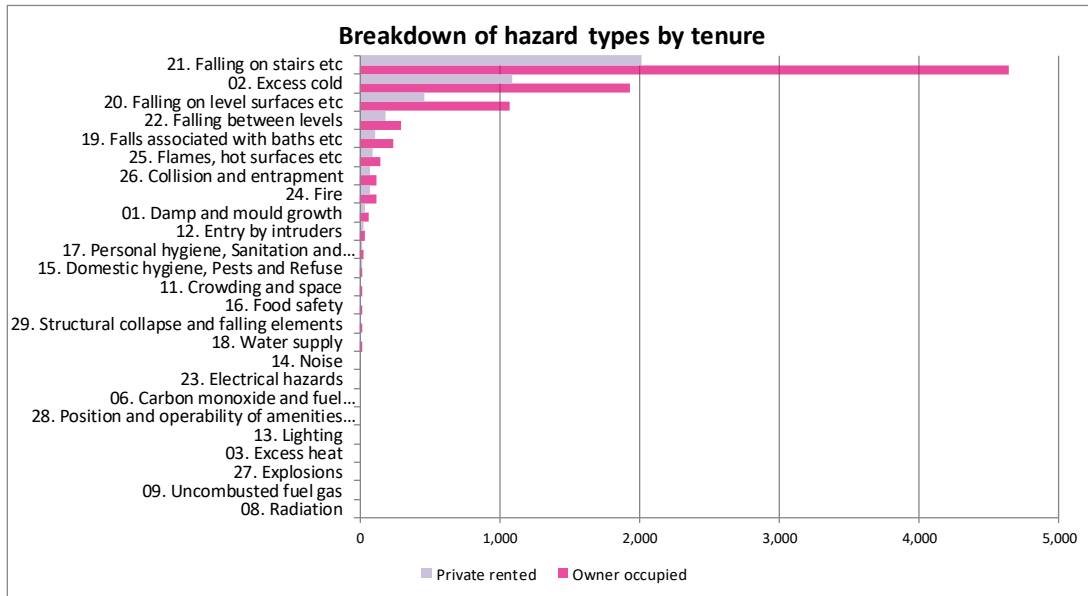
In addition there is a strong correlation between wards with high numbers of HMOs and HMOs with no EPC, lower EPC ratings (D or below) or expired EPCs.

EPC Ratings by Ward 2020 (wards with 100 or more HMOs in red)

	Licensed								Unlicensed										
	A	B	C	D	E	F	G	Expired	No EPC	A	B	C	D	E	F	G	Expired	No EPC	
Acomb		1	1	5	1							7	2	2				2	
Bishopthorpe													1					1	
Clifton			10	29	7	1		3	1		2	25	65	13			9	1	
Copmanthorpe																			
Dringhouses & Woodthorpe			7	2				0				5	8	2		1	2		
Fishergate		1	23	82	14			14	2		7	128	233	35	1		44	2	
Fulford & Heslington			15	11	3			1			1	13	24	4	1		3		
Guildhall		2	45	112	37			15	5		61	160	159	45	6	1	83	5	
Haxby & Wigginton				1							1	2	1	1					
Heworth		5	59	59	11			3	2	1	5	60	87	16	1	1	23	2	
Heworth Without			1	3						1		3	2						
Holgate			6	9	1	1		1	1		2	23	22	2	1		10	1	
Hull Road		5	199	122	9			13		1	6	124	198	53	2	1	53		
Huntington & New Earswick			1	2	1			0			2	7	11				3		
Micklegate			4	24	8			3	3		12	47	78	25		1	34	3	
Osbalwick & Derwent		1	30	20				1			8	27	21	6			9		
Rawcliffe & Clifton Without			1	2	1						1	4	7	2		1	3		
Rural West York													1						
Strensall												1	1	1					
Westfield			1	2		1	1	1				6	14	2	1		5		
Wheldrake														1					
Total	0	15	403	485	93	3	1	55	14	3	108	642	935	210	13	6	284	14	

17. The Housing health and safety rating system (HHSRS)

The HHSRS³ measures homes which have a deficiency that might give rise to a hazard. There are an estimated 12,920 category 1 hazards in York's private sector stock, of which over 4,194 (32%) are within the privately rented sector, The number of hazards are again weighted in the ward areas with high levels of HMOs



18. Findings of the Licensing Programme

When licence holders apply for a HMO licence they are issued with licence conditions specifying to the licence holder what action they must take. Some of these are standard conditions which every applicant must be achieve, however there are some conditions where the licence holder fails to meet a specified condition relating to the property or management of the property. When this occurs they are given a specified time to rectify the matter. The following table outlines the type and number of conditions imposed on HMOs that were licensed first time on the 1st October 2018, following the extension of the national HMO licensing scheme.

³ HHSRS provides the minimum standard for housing, in that a property should be free from a Category 1 hazard. There are 29 criteria for assessing hazards in a property and typically hazards arise from faults or deficiencies in the dwelling which could cause harm. The council is under a duty to take action in the case of Category 1 hazards and if necessary it may carry out any necessary remedial work and reclaim the costs. The council has a power (discretion) to take action in the case of all Category 2 hazards (i.e. those which carry lower risks).

The table shows the number of HMOs that failed to meet the standards in 2018.

	New HMOs and existing HMOs that have been renewed
The number of properties failing the room size and a condition imposed. NB this could relate to more than one room in the property	58
The number of properties failing to meet the required level of kitchen facilities for the number of occupants and households	192
The number of properties failing to meet the required level of bathroom facilities for the number of occupants and households	12
The number of properties failing to meet the required level of toilet facilities for the number of occupants and households	82
The number of properties failing to provide the level of controllable heating facilities for the number of occupants and households	25
The number of properties failing to meet the required minimum energy efficiency levels and licence conditions imposed	78
The number of properties failing to meet the required level of carbon monoxide detection in the house	205
The number of licence holders who fail to meet the required level of training by attending and passing a recognised training course	312
Total	609

19. The table below is a snap shot on the 12th February 2021 showing the significant improvement in just over 16 months, both in terms of the management and condition of HMOs. Without licensing these properties would likely to continue to fail to meet the standards required.

Conditions above the standard conditions	Number of properties
The number of properties failing the minimum room size	2
The number of properties failing to meet the required level of kitchen facilities	16
The number of properties failing bathroom/showering facilities	0
The number of properties failing to meet the required level of toileting facilities	12
The number of properties failing to meet the controllable heating condition	0
The number of properties failing to meet the required level of minimum energy efficiency levels	9
The number of properties failing to meet the required level of carbon monoxide detection in the house	4
The number of licence holders who failed to meet the minimum level of training	5
Total at 12 th February 2021	48

Should additional HMO licensing is extended to other HMOs then we expect the same significant improvement in standards

HMO inspection programme

20. When HMOs are licensed a full inspection of the property will be carried out within a five year period. A desk top risk assessment taking into account a number of factors but with a focus on Safety issues –in particular relating to fire safety, gas safety and electrical safety, will determine how quickly that inspection takes place.
21. Below is a summary of the outcome of the inspection programme in the first 18 months since the extension of HMO licensing. These matters have been addressed through a range of action from advice through to informal notices and formal notices- see page 21-23 of the evidence base report for more in-depth information

Number of inspections	Issues found	Category 1 Hazards	Category 2 Hazards
299 inspections	19 rooms found to be mis-measured	14 category 1 hazards found	239 category 2 category

Options to Improve the standard of HMO's in York

22. It is considered that there are five general approaches to improving the standards of HMO's, these are:

- 1) Voluntary accreditation
- 2) Informal Area Action
- 3) Management Orders
- 4) Additional Licensing in targeted wards
- 5) Additional Licensing citywide

Voluntary Accreditation

23. The Council initially supported the Universities in running a Voluntary Code of Practice for landlords to sign up to a set of standards up until 2013. The weakness in this approach was that there was no supporting inspection programme alongside the set of standards. As such, some landlords signed up but didn't meet the standards. In 2014, the universities brought this scheme to a close and the council stepped forward to operate its own voluntary accreditation scheme, called YorProperty. This was initially successful with 150 Landlords/Agents and around 600 properties, including some of the larger student private halls of residence being advertised through the website. However, once HMO licensing was brought in this replaced the need for voluntary accreditation for a number of properties. As such numbers dwindled, the programme became unsustainable and was brought to a close in 2018. So whilst we could re-introduce a voluntary accreditation, it is not likely that landlords who chose not to be part of this programme previously will engage in it now and therefore it is unlikely that there will be a meaningful chance in the quality and standards we are seeking to achieve.

Informal Area Action

24. The Council could consider creating a non-statutory informal action area where there are high concentrations of poorly managed or maintained

properties. The driver for the housing improvement would come from a combination of council activity through advice and support. However, as with option 1 this would not be enforceable and therefore would not support residents who live in the houses of landlords who do not wish to engage.

Management Orders

25. Alternatively the Council could use other powers in the Housing Act 2004. Specifically Management Orders where there are comprehensive and serious management failures. The use of Management Orders (MOs) is resource intensive working on individual properties and therefore on individual properties does not provide value for money. We would not be able to tackle a large number of HMO's utilising MO's. The use of MO's can also be considered to be heavy handed and can cause problems for the Council when attempting to work collaboratively with landlords.
26. Both option informal areas and MOs are expensive and do not generate an income to support the activity. Such works would therefore likely be funded from Council Tax. This seems unfair when many of the problems are due to poor management practices by landlords or agents operating in a buoyant market place.

Additional Licensing in targeted wards

27. The attached report provides clear evidence that there are a significant proportion of HMOs in certain wards which are being managed ineffectively so as to give rise, or be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public. The wards being:
 - c) Hull Road;
 - d) Guildhall;
 - e) Clifton
 - f) Fishergate;
 - g) Heworth;
 - h) Micklegate;
 - i) Osbaldwick and Derwent; and
 - j) Fulford and Heslington
28. Specifically the report highlights key issues around both poor housing conditions and poor management issues both in terms of properties which have recently been licensed following the extension of mandatory

HMO licensing and also the wider evidence base gathered from the Office for National Statistics (ONS), Building Research Establishment evidence, Energy Performance Certificate data and complaints data (pages 13-31).

Additional Licensing citywide

29. Alternatively licensing could be extended to HMOs in the city across all wards. However, the evidence is that the wards with the older housing stock, higher levels of HMOs have the poorer housing conditions and management.
30. Critically when the Council is considering to introduce any additional licensing scheme it must be able to demonstrate that it does so in line with the provisions of the Housing Act 2004. The Council can evidence that it has tried different approaches to improve the sector including initially thorough the voluntary code of practice run in partnership with the universities and then the council operated voluntary accreditation scheme. Clearly both these schemes have not been effective with dealing with the problems and that poor conditions and management of HMOs have continued to be identified.
31. Our recommended proposal is therefore that we introduce a targeted HMO licensing scheme in these wards with the highest concentrations and poorest conditions. Our proposal seeks to consult about this approach to help tackle the problems we identified in the evidence base.

Consultation

32. There is a statutory requirement to consult for a minimum period of 10 weeks on any proposals to designate an area subject to Additional Licensing. This report sets out recommendations to conduct a consultation and for the results of the consultation to be considered as part of the development of the proposed structure of the Additional Licensing scheme.
33. The consultation will demonstrate that it has satisfied the legal requirement to take reasonable steps to consult with those people who may be affected by the designations. This includes neighbouring areas outside of the identified areas.
34. The approach to undertaking the consultation is set out below:

- Online questionnaire tailored to gauge a cross section of views on the proposals from our residents promoted through ward and communities groups ;
 - Online focus groups with key stakeholder groups such as the universities and student bodies;
 - Other key organisations such as the North Yorkshire Fire and Rescue Service, Police, HMRC, and Border Agency
 - Drop in sessions in various parts of the City (subject to Covid restrictions at the time);
 - E-communications through social media and the Council`s website; and
 - Online Workshops with Landlords and Letting Agents
- Upon the completion of the consultation a report detailing the consultation results will be brought back to the Executive in autumn.

Options

35. The report outlines the evidence and considers five possible interventions for tackling substandard and ‘problematic’ smaller HMOs in the city. At present there are two options:

Option 1: Do decide that there is insufficient evidence and not to undertake consultation on additional HMO licensing and continue with the status quo

36. The attached report provides strong evidence that a number of HMO’s in the city are of a poor standard, either in terms of energy performance, the prevalence of hazards, or not having suitable facilities for the number of occupants. If no consultation is undertaken we will miss out on an opportunity to improve the living conditions for a many of our residents.

Option 2: Ask officers to undertake the statutory 10 week consultation on the potential introduction of targeted Additional Licensing scheme for HMO’s with 3 or 4 occupants within the wards of Hull Road, Guildhall, Clifton, Fishergate, Heworth, Micklegate, Osbaldwick and Derwent; and Fulford and Heslington and to present the findings back to Executive with options to decide what happens next

37. The attached report provides clear evidence that a significant proportion of the HMOs in the proposed targeted wards are being managed ineffectively so as to give rise, or likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public. The report highlights key issues around poor housing conditions and poor management issues both in terms of properties

which have just recently been licensed following the extension of HMO licensing and those which are unlicensed.

38. The Council, in line with the Housing Act 2004, has considered and tried other approaches to improve the sector including initially through a voluntary code of practice run in partnership with the universities followed by a Council operated voluntary accreditation scheme. However, the evidence demonstrates that these schemes have not been effective with dealing with the problems and that poor conditions and management of HMOs have continued. The most effective method of dealing with them is to introduce a targeted HMO licensing scheme in the wards with the highest concentrations and poorest conditions. Our proposal seeks to consult on this approach.

Council Plan

39. Investigating the case to extend HMO licensing to smaller HMOs is a key action of the council plan to achieve the outcome of Creating Homes and World class infrastructure. It also contributes to other council plan outcomes:
- a) Open and Effective Council
 - b) A better start for Children and Young People
 - c) Good health and Wellbeing

Implications

Financial Human Resources and Information and Technology.

40. If option 2 to conduct a consultation is approved it should have limited impact on the council. There are no human resource, financial or ICT implications as the consultation exercise will be carried out using current resources. The implementation and delivery of the scheme will require additional staffing resources which have been accounted for within the fees and charges for licences. A recruitment process will need to be carried out to secure the necessary resources and this is programmed into take place before the Scheme comes into effect thereby limiting the risk and impact on the organisation.

One Planet Council / Equalities

41. See Annex 2 which highlights that HMO properties are more likely to be disproportionately occupied by young people on lower incomes. Focus will be to ensure that such tenants are consulted

Legal.

42. Part 2 of the Housing Act 2004 sets out the scheme for licensing HMOs in a local housing authority area and the “Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015” gives local housing authorities general approval regarding the implementation of additional and selective licensing designations in England. When considering the introduction of an Additional Licensing Scheme a local housing authority must proceed through a consultation period of not less than ten weeks and the statutory processes as laid out in Sections 56 and 57 Housing Act 2004.
43. Under section 56(1) of the Act a local housing authority can designate the whole or any part or parts of its area to be subject to additional licensing. Where an additional licensing designation is made it applies to all HMOs specified in the designation. Section 56 also places requirements upon the local housing authority when considering a designation for additional licensing of HMOs, in that it must:
 - Consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public;
 - Take reasonable steps to consult with persons who are likely to be affected and consider any representations made in accordance with the consultation and not withdrawn; and
 - 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 (these codes relate to University managed accommodation).
44. Section 57 provides further considerations for the local housing authority in that it should ensure that:
 - Exercising the designation is consistent with the authority’s overall housing strategy;
 - Seek to adopt a coordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by them or others;

- Consider whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question; and
 - 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).
45. Responsibility for obtaining a licence lies with the person who has control of or manages the HMO, however, the local housing authority has a duty to maintain a register of licences that are in force (Section 232(1) Housing Act 2004).
46. Each licence relates to one HMO only and is granted for such period specified in the licence which can be up to five years unless revoked. There is an obligation on the local housing authority to review them “from time to time” (Section 60 Housing Act 2004).
47. Licences do not automatically transfer on sale or death of landlord (Section 68 Housing Act 2004).
48. Any / all enforcement action take regards unlicensed HMO’s / non-compliance with HMO conditions must be in accordance with the Council’s relevant enforcement policy.
49. Any decision taken by the Council which is not compliant with the correct procedure and / or relevant council policies may be unlawful, and lead to legal challenge and / or reputational and financial risk to the Council.

Property

50. None

Public Health

51. We know that there is a strong link between housing and health with poor living conditions having a harmful impact on physical and mental health. It is important that the council uses every means at its disposal to improve the quality of HMO accommodation and so the public health recommendation is to support option 2 as set out in the report.

Risk Management

52. The statutory process to designate an Additional Licensing scheme is being followed to ensure full compliance, including the implementation of a 10 week consultation. The consultation will be designed to ensure our

compliance with legislation and statutory guidance, minimising the risk of legal challenge.

Contact Details

Author:

Ruth Abbott

Housing Standards and Adaptations Manager
Housing Services
01904 552300

Paul McCabe

Corporate Strategy and City Partnership Manager
01904 554527

Karen Jacques

Senior Business Intelligence Officer

Alison Cooke

Development Officer
Local Plan team

Specialist Implications Officer(s)

List information for all

Legal

Victoria Waudby, Senior Solicitor & Sarah Owen, Senior Legal Officer

Finance

Samantha Sidebottom
Accountant

Public Health

Sharon Stoltz
Director of Public Health

Chief Officer Responsible for the report:

Report Approved

Date

3rd March 2021

Tracey Carter

Interim Director of Place

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report