

28 July 2022

Executive

Report of the Director of Housing, Economy and Regeneration
Portfolio of the Executive Member of Housing and Safer Neighbourhoods

Additional Licensing in York – Consultation results and decision on designation

Summary

1. In March 2021, Executive considered a report seeking to improve standards in the private rented sector. The options presented included an analysis of the opportunity to utilise additional licensing powers for smaller houses in multiple occupation (HMOs). Approved recommendations from that report supported the undertaking of a consultation with interested stakeholders, including tenants and landlords, to gather views to inform any future decisions. The council already has a licensing regime for HMO's which contain 5 or more residents, the consultation sought views on expanding the licensing programme to also include HMO's with 3 and 4 residents in certain parts of the city.
2. Licensing does not and cannot control the number and distribution of HMOs. This is achieved through Planning and specifically the Article 4 Planning Directive put in place in April 2012. Planning works to ensure a balance of housing tenures in the city. This is in contrast to HMO licensing which is entirely focused on improving the condition and the management of properties. As such, it is considered that a licensing regime can support the delivery of the following benefits:
 - Residents' homes are more likely to be safe and meet the needs of the residents;
 - Form part of a coordinated approach to dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector;
 - Significantly assist the Council to deal with the problems identified in this report associated with poor management of HMO's;

- 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 the improvement of the energy performance of our private rented housing stock, ensuring they are more comfortable and affordable to live in;
 - Support our educational institutions and businesses through a greater provision of well managed and sustainable housing; and
 - Create a greater consistency of approach across HMO's in the city, setting clearer expectations for landlords and agents.
3. Part 2 of The Housing Act 2004 provides the council a discretionary power to licence smaller HMOs within a designated area in the district, with the intention of ensuring minimum standards are met. This discretionary power is subject to statutory consultation. Between the 16th April and the 27th June 2021, the council carried out a statutory consultation on the proposed additional licensing scheme with key stakeholders and residents.
 4. Following this feedback, it was determined that the council would undertake a second round of consultation, seeking feedback on more detailed aspects of the proposal. This second consultation took place between 22nd October and the 31st December 2021. This provided a further opportunity for stakeholders to provide feedback. In total, 1032 consultation responses were received across the two rounds of consultation. This is considered a strong response rate which is sufficient to support analysis and the recommendations in this report.
 5. This report provides analysis of the results from both consultations. The overall outcome of the consultation clearly identifies broad support for additional licensing within identified designated areas of the city and therefore recommendations are brought forward for consideration regarding the implementation additional licensing in these identified wards.

Recommendations:

6. This report makes the following recommendations for consideration and decision by Executive:
 - i. That a designation be made of the following wards in the City of York Council as subject to Additional Licensing under Section 56(1)(a) of the Housing Act 2004 for all Houses in Multiple Occupation (HMOs), subject to the exemptions specified in Appendix 1 and Appendix 3,

irrespective of the number of storeys, that contain three or four occupiers in two or more households within the following wards:

- Hull Road;
 - Guildhall;
 - Fishergate;
 - Clifton;
 - Heworth;
 - Micklegate;
 - Osbaldwick and Derwent; and
 - Fulford and Heslington
- ii. That the designation set out in recommendation (i) above, shall come into force on 1st April 2023 for a period of 5 years.
- iii. That delegated authority be given to the Corporate Director of Place to sign the 'Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2022' (as attached at Appendix 3) in accordance with the provisions set out in the Scheme of Delegations in the Council's Constitution.
- iv. Approve the adoption of the proposed amended fees and charges structure (as attached at Appendix 4) and review those fees annually to ensure they remain reasonable and proportionate and address any issues relating to surpluses or deficits in accordance with case law and the EU Services Directive.
- v. Approve the adoption of the amended HMO Licensing Policy 2020 (as attached at Appendix 5) and to delegate to the Corporate Director of Place to authorise amendments to the standards and conditions contained in the policy where necessary to ensure they remain reasonable and proportionate and in accordance with any relevant legislative changes.
- vi. Support the creation of a stakeholders group to work collaboratively on driving up standards in the wider Private Rented Sector. The composition of the group shall include representatives of organisations who have actively taken part in the consultation.

Reason: The proposal is consistent with the Council's ambition to improve management standards and housing conditions in private rented accommodation in the city and reflects the broad support for this approach identified through stakeholder consultation.

Background

7. The York, North Yorkshire, and East Riding Housing Strategy (2021 – 23 Review) sets out a number of strategic priorities for the region. One of the five key priorities is to ‘Ensure that People have a Decent Home to Live in’. The report states that this will be achieved, in part, through supporting selective licensing schemes and enforcing standards in the private rented sector. The City of York Council Plan 2019-23, seeks to ensure ‘the right housing is available, affordable and environmentally sustainable for everyone’. One way in which this will be delivered is to ‘Investigate the case to extend HMO licensing to smaller HMOs and work with partners to maximise energy efficiency in private sector housing’. This report seeks to deliver on these strategic objectives.
8. On the 18th March 2021, Executive considered a report titled ‘Consultation on Additional Licensing Scheme for Houses in Multiple Occupation (HMO)’. The approved recommendations authorised the undertaking of a statutory citywide consultation to explore the option of an Additional Licensing Scheme. Between the 16th April and the 27th June 2021, the Council carried out this city-wide statutory consultation on the proposed additional licensing scheme with key stakeholders and residents. The outcome of that consultation was that there was broad support for the proposals and that the council would progress with a further round of consultation considering the more detailed aspects of the proposals. This included:
 - Which wards are being proposed to be included in the designation, the proposed wards were:
 - Hull Road;
 - Guildhall;
 - Fishergate;
 - Clifton;
 - Heworth;
 - Micklegate;
 - Osbaldwick and Derwent; and
 - Fulford and Heslington
 - The evidence used to determine the proposed designation and how an additional licensing scheme would seek to improve standards and management of HMOs in these wards where other action has proven to be ineffective in doing so.
 - What the proposed scheme looks like including the type of HMO to be included, the draft conditions being proposed, including proposed ideal minimum room sizes and the licensing fee structure.

- Whether the consultation, decision making process, and proposed scheme meets the tests set out in section 56 and 57 and the guidance issued under the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015.

Summary of Responses received from the Two Rounds of Consultation

9. There were a variety of responses received, with residents and private tenants generally being more supportive of additional licensing than landlords. Residents and private tenants also expressed greater concern regarding current standards of accommodation compared to the responses received from landlords. The responses received to all consultation questions identifies a clear difference of opinion between residents and those who own or manage houses in multiple occupation.
10. Overall, just 35% of total respondents believe that landlords maintain their properties to a good standard. When looking at the data by respondent type, there is vast differentiation in the results. Private landlords / letting agent or managers were significantly more likely (78%) than either private tenants (15%) or residents who are not private tenants (18%) to state that private landlords in York maintain their properties to a good standard. Meanwhile, almost three quarters (73%) of private tenants stated that they don't believe private landlords in York maintain their properties to a good standard, significantly fewer (6%) private landlords / letting agents or managers express this view.
11. Respondents in the second round of consultation were more likely to agree (48%) than disagree (31%) that a significant portion of HMOs in the eight named wards are being managed in a way that does or might create problems for people living in them. However, agreement with this statement was significantly lower amongst private landlords / letting agents or managers (9%) than among residents who are not private tenants (78%) and private tenants (75%).
12. Approaching two thirds (65%) of private landlords / letting agents or managers disagree that a significant proportion of HMOs in the named wards are being managed in a way that does or might cause problems for people living in them. Private landlords / letting agents or managers who own or manage 3 or more HMOs are more likely to disagree with this statement (81%) than those who only manage one or two (58%).

13. Respondents to the consultation were then asked to state a reason for their agreement or disagreement with the additional licensing proposal. In summary, the most common theme (36 responses) was that landlords and agents already provide a quality home and service and therefore additional licensing is not required.
14. The second most common response (35 responses) can be themed around property neglect. Views including issues with damp and mould, vermin, rubbish tipping, small room sizes, insufficient bike and car parking for the number of residents, no outside space, and cramped living conditions.
15. When respondents were asked whether they agreed or disagreed that HMOs in the eight named wards are being managed in a way that does or might create problems for members of the public, the responses were balanced, with a slightly higher proportion disagreeing (38%) than agreeing (35%) with this statement. However, almost seven in ten (69%) private landlords / letting agents or managers disagree that a significant proportion of HMOs in the named wards are managed in a way which does or might create problems for members of the public, compared to 14% of residents who aren't private tenants, and 19% of private tenants. It should also be noted among letting agents and landlords who own or manage HMOs, disagreement is higher among those who manage 3 or more HMOs (83%) than those manage one or two (55%).
16. Consultation respondents were in favour of the proposal to introduce a targeted additional licensing scheme for HMOs in York. This was particularly the case in the first round of consultation, when 69% agreed with this statement and 25% disagreed. However, the responses were slightly more balanced in the second round of consultation, with 54% in agreement and 38% disagreeing with the proposal for additional targeted licensing.
17. In both the first and second round of consultation private tenants (91% first consultation, 79% second consultation) and residents who are not private tenants (84% in both consultations) were more likely than private landlords / letting agents or managers (29% first consultation, 20% second consultation) to agree with the proposal to introduce a targeted additional licensing scheme for HMOs in York. The proportion of private landlords / letting agents or managers who agreed with the proposal fell from 29% to 20% from the first to second consultation.
18. The standards and conditions contained in the Implementation Policy for HMOs were generally supported. In the first round of consultation this agreement was stronger, 76% agreed with these standards and

conditions, while 12% disagreed. Agreement dropped in the second round of consultation, but remained at over half (51%), the proportion who disagreed was 28%.

19. In both rounds of consultation, agreement with the standards and conditions contained in the Implementation Policy is significantly higher among private tenants (88% first consultation, 76% second consultation) and residents who are not private tenants (88% first consultation, 79% second consultation) than private landlords / letting agents or managers (51% first consultation, 27% second consultation). All three groups saw a drop in the proportion agreeing with the HMO standards and conditions between the first and second round of consultation, however this drop was most notable among private landlords / letting agents or managers (from 51% to 27%).

Analysis

20. As can be seen from both rounds of consultation there is overall support, with particularly strong support from residents and tenants of private rented houses, for the introduction of Additional Licensing in the 8 targeted wards. However, it is important that consideration be given to the concerns raised about the implementation of additional licensing as outlined in the consultation process. The most common and significant concerns or comments can be categorised around four themes. These are:

- Whether the 8 wards selected for the **targeted approach** are correct and whether this approach will lead to improved standards
- Whether the required **standards and conditions** of licensing were appropriate
- Whether there are **alternative ways of raising standards** specifically the use of Accreditation Schemes
- Concerns and queries raised regarding **HMO Licensing fees**

Targeted Approach

21. Eight wards were identified within the consultation documents for potential targeted additional licensing. These wards are:

Hull Road;
Guildhall;
Fishergate;
Clifton;
Heworth;
Micklegate;

Osballdwick and Derwent; and
Fulford and Heslington

These wards were identified for three key reasons. Firstly, because they are the areas with both the highest numbers of HMO's but also the highest proportion of total housing which are HMO's. The other wards in the city have a significantly smaller proportion of their housing stock which are HMO's. Secondly, the 8 identified wards rank highly in terms of the number of homes which are 'older housing stock'. There is a correlation between the general age of housing stock and conditions, where on average an older house is more likely to provide poorer living conditions. This is evidenced in the Building Research Stock Modelling assessment¹. Thirdly, within these 8 wards we have identified the highest number of category 1 and 2 hazards within the existing licensing programme housing stock. We have been required to issue more specific license conditions in these 8 wards than in any other areas of the city. It is considered for these reasons that it is a rational and reasonable approach to identify these 8 wards for consideration.

22. Appendix 1 provides detailed analysis of these wards and the table in Appendix 6 summarises this information, clearly ranking the wards through these key selection criteria and providing further evidence to explain the identification of the 8 wards.
23. Alongside identifying the most suitable wards for additional licensing, it is also possible to use the data in Appendix 6 to demonstrate the positive impact that HMO licensing has had on the housing stock across the city. For context, existing licensable HMO owners are required to provide information in order to demonstrate that a licence should be issued. The three tests being that the:
 - Property is reasonably suitable for occupation as a HMO **(physical standards)**
 - Management arrangements are satisfactory **(management standards)** including having passed a recognised training qualification or to do so within a 18 month period of issuing the licence
 - Licensee and manager are fit and proper persons **(Fit and Proper test)** The applicant must be the most appropriate person to hold the licence.
24. Having met the tests, a 5-year licence is typically issued with standard licence conditions. However, where there are specific concerns, for

¹ Building Research Stock Modelling and Health Impact Assessment 2015

example in relation to the level of amenities, fire safety or lack of relevant training qualification, the licence holder is issued with additional specific conditions to address these concerns within a defined period.

25. Since 2018, 883 specific license conditions have been both issued and resolved in the 8 identified wards. This is clear evidence of the positive impact that HMO licensing has had so far. Given the age profile and numbers of unlicensed HMO's in the 8 identified wards, alongside the information provided through the consultation responses, it is reasonably concluded that there will be a significant number of issues which will need to be resolved when additional licensing for smaller HMOs is required. Resolving these issues will improve standards within the private rented sector across the city.
26. Overall, it is considered that there is a clear reason for selecting the 8 identified wards. There is also a demonstrable evidence that the existing licensing programme has tackled a large number of identified issues within these 8 wards. It is also clear from the consultation responses received that residents and tenants have significant concerns about the condition and management of HMOs within these wards.

Standards and conditions

27. Details of the required standards and conditions associated with any potential additional HMO were included in the 'Implementation Policy for HMOs' issued as part of the consultation. Generally, these standards and conditions were supported, in the first round of consultation 76% of respondents agreed, while 12% disagreed. Some respondents stated that further detail was required to help them understand the proposal.
28. In the second round of consultation, further detail was provided. Whilst the level of agreement reduced in this round of consultation, over half of respondents (51%) supported the standards and conditions proposed, with just 28% disagreeing. It is not considered that any comments were received as part of the consultation which would justify a change in the standards and conditions proposal which was consulted on.

Alternatives including Accreditation Schemes

29. The council has previously supported the University's Voluntary Code of Practice for Landlords, this was a voluntary accreditation programme. Latterly, the council adopted and ran this programme when the university stopped their code of practice scheme in 2012. The council then stopped running this programme itself when landlord interest dwindled to

unsustainable levels following the introduction of mandatory licensing for larger HMOs. There is no evidence that the accreditation scheme was successful at improving the general standard of HMOs within the city. As can be seen in Appendix 6, despite an accreditation scheme being in place for a significant period of time pre mandatory licensing, a large number of issues and category 1 and 2 hazards were identified when HMO licensing was introduced.

30. Respondents in the second round of consultation were asked whether they agree that alternatives such as the continuation of existing powers only and/or a voluntary accreditation scheme could present solutions to problems identified within the HMO sector. Overall, 37% stated that alternatives could provide a solution, whilst 44% disagreed. As with other questions, there was a split between landlords (47% agree that alternatives might help), compared to just 29% for private tenants and 24% for residents who are not private tenants. Members may also want to note that very recent discussions with the two main universities have established that both are supportive of the Additional Licensing proposal and are not seeking to introduce a voluntary accreditation scheme at this time.
31. In addition to voluntary accreditation and targeted licensing, other options considered included:

Informal area action (Proactive inspection programme)

32. This would be delivered through a non-statutory action area, considering parts of the city where there was a concentration of poorly managed or maintained properties. The driver for the housing improvement would be informal and come from a combination of the provision of information and small-scale council activity to promote standards. This would need to be delivered using the existing team resources and therefore activity would be limited. Actions would be relatively limited and improvements would significantly be voluntary. As such, it is considered that this would bring very limited tangible improvements to conditions and standards.

Targeted use of Interim Management Orders (IMOs) and Final Management Orders (FMOs)

33. The Housing Act 2004 gives local authorities powers to use Management Orders for tackling comprehensive and serious management failures. However, these are powers that are currently only available for HMOs that require a license under the mandatory HMO licensing scheme. Therefore, this approach could not be utilised to improve HMO's which are not part of a licensing regime.

City Wide Additional Licensing scheme

34. With this approach, all HMO's, regardless of ward would be required to apply for a license. However, it is not considered that there is sufficient evidence of the need for this approach considering standards and the number of HMO's outside of the 8 targeted wards identified in this paper.

Summary of alternatives

35. Based on the city's previous unsuccessful attempt to raise standards through voluntary accreditation and the views expressed in the consultation responses, it is not considered that a non-mandatory alternative will deliver the level of improvements which are needed and which our residents deserve. Improvements are more likely to be delivered through a licensing regime. Even if a voluntary accreditation scheme was re-instated, there are concerns that many landlords who own some of the poorer quality housing stock and who have so far not raised standards, would not meaningfully engage in this process. However, should a proposal be brought forward by others that would seek to raise standards beyond those set out in the proposed licensing regime, the council would give consideration to supporting this.

HMO Licensing Fees

36. The proposed fees and charges included in the second round of consultation (details within Appendix 4) have been developed to provide incentives for compliant landlords whilst providing sufficient resources internally to ensure that the scheme can be effectively delivered with every property inspected at least once during the 5-year licence period. Members may also want to note that should a landlord decide to pass-on the full cost of the licensing fee to the occupants of a 3 or 4 bedroom HMO this would currently equate to an additional cost of £1.15 to £1.53 per occupant per week. This is based on no further work being necessary at the home in order to reach the required health and safety/management standards.
37. During the consultation the York Residential Landlords Association highlighted its view that the previously proposed fee structure proposal in the second round of consultation may be potentially unlawful due to the second stage of the fee being payable once an application is complete but before a "notice of decision to grant a licence is issued". This meant that the council could still refuse an application even after the second stage payment had been made, so that the authorisation process was not complete (as required by law) before the second stage fee payment had to be made. Officers have considered this position and agree that the second stage fee should only be collected when the council is

satisfied that a final licence is to be issued. The fee structure approach has therefore been adapted to reflect this change.

38. In response to a written proposal by Safeagent, the council is also accepting that where a registered 'not for profit' organisation or charity or an individual housing provider, is assisting the council by offering permanent accommodation to meet our homelessness duties, no fee will be payable. However, all standards and conditions would still need to be met by the housing provider.

Options

39. It is considered that there are two key options to consider:

Option 1 - Do nothing further

40. Currently the council provides a range of services aimed at driving up standards in the private rented sector and in particular the HMO sector.

These existing services include:

- Licence programme for more than 1000 HMOs with 5 or more occupants forming 2 or more households across the city;
- Dealing with complaints made from private tenants;
- Working with others in the sector e.g. North Yorkshire Fire and Rescue and Police, sharing intelligence and information to target poor housing;
- Providing information on our website to tenants, landlords, letting agents and others to ensure that they are aware of the range of laws pertaining to the Private Rented Sector;
- Working with Universities, student unions and other partners such as the Citizen Union to ensure that those involved are aware of what we can offer to support tenants, landlords and others;
- Provision of training for landlords and letting agents, both online and in-person to ensure that they have the knowledge and skills to ensure that properties are well managed; and
- Making successful funding bids to Government, most recently for the implementation of the Minimum Energy Efficiency Standards, and a further bid to Government regarding the development of an online training package for landlords and letting agents.

41. This approach has driven up standards. However, we know from the evidence presented in this report and the consultation responses that this range of services has been insufficient to take standards to where they need to be in order to protect our residents. Without additional

targeted licensing, the standards of HMO's occupied by 3 or 4 persons are unlikely to improve significantly.

Option 2 – Introduce Additional Licensing in accordance with the recommendations of this report

42. There are over 2000 HMO's in York which are not currently subject to a licensing programme. Nearly 1900 of these unlicensed HMO's are located within the 8 identified wards. Evidence from the existing licensing programme has identified a large number of hazards and concerns within larger HMO housing stock in these parts of the city. Housing stock in these wards is generally older which evidence suggests increases the likelihood of poorer living conditions. In support of this, consultation responses have clearly identified a number of existing issues within these unlicensed homes and overall there is broad support for the introduction of additional targeted licensing and a belief that this will improve standards across these homes. For these reasons, it is recommended that Option 2 is supported.

Conclusion

43. The Council has considered and met the legal requirements under section 56 and 57 of the Housing Act 2004 in considering the case for targeted additional licensing. This has been demonstrated through:
- The presentation of robust evidence that highlights concerns about the ineffective management of many HMOs within the identified targeted wards;
 - The undertaking of two rounds of consultation which attracted significant support, particularly from tenants and residents for the proposed targeted additional licensing scheme in the 8 wards. 84% of residents and an average of 85% of tenants across both rounds of consultation being in support. The consultation has also identified a significant number of HMOs that cause problems for both occupiers and residents; and
 - That the council is not seeking to include any university managed accommodation within the proposals.
44. In addition, section 57 of the Act provides further considerations for the council in that:
- The council is seeking designation of the 8 wards which is consistent with the authority's overall housing strategy;

- The council has considered additional licensing as being part of its 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 others;
- The council has considered other potential interventions carefully and 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
- That making the designation will significantly deal with the problems identified. Licences will include all the mandatory conditions required under the legislation, for example, providing gas and electrical certificates and maintaining health and safety standards, as well as additional (discretionary) licence conditions to address issues such as ASB and environmental / management issues.

45. The Council Plan and Housing Strategy aims to improve living conditions in the private rented sector and officers are confident that this can be achieved with the introduction of a targeted Additional Licensing scheme in the city focussed in the 8 identified wards, namely:

Hull Road;
 Guildhall;
 Fishergate;
 Clifton;
 Heworth;
 Micklegate;
 Osbaldwick and Derwent; and
 Fulford and Heslington

46. It will require all owners of HMOs in these wards that are occupied by three or four tenants who form 2 or more households to apply to the council for a HMO licence. Once an application is received and valid the council will determine the licence using the criteria laid down in the HMO Licensing Policy attached at Appendix 5.
47. The amended fees and charge's structure and the conditions attached to licences will ensure that the council complies with case law and the EU Services Directive and supports private landlords helping the council by offering permanent accommodation to meet homelessness duties.
48. Alongside the recommendations to establish an additional licensing programme, recommendation vi) seeks support to create a

stakeholders group to work collaboratively on driving up standards in the wider Private Rented Sector. The composition of the group shall include representatives of organisations involved in the management of HMO's, providing opportunity for further discussion regarding improving standards across the city.

Timetable for implementing this decision

49. Should the recommendations be approved the Council has general approval to designate the scheme under the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 to implement an Additional Licensing scheme.
50. The timescale for implementing this decision is for the designation to commence on the 1st of April 2023. This requirement is to provide the Council with sufficient time to conclude the reporting process, to comply with Section 58 of the Housing Act 2004 which states that a designation cannot come into force until three months after the date when the designation was made, and to ensure that there are sufficient resources in place to implement, administer and enforce the scheme.

Council Plan

51. Investigating the case to extend HMO licensing to smaller HMOs is a key action in 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

52. The costs of managing the Licensing function is covered by the fees that can be charged. It has been assessed that the additional resources needed to manage the policy will be approximately £500k per annum and fees have been set to recover these costs over a five-year period. Total income will ultimately be dependent on the numbers of applications and therefore expenditure will need to be carefully managed so that the costs are covered by income. The set-up fees for the new licensing scheme requires the appointment of staff ahead of the implementation of the new

scheme at an estimated cost of £144k. These costs will be ultimately met from the fees charged from 2023/24 onwards but will need to be funded from reserves in year. No staff will be appointed during the 3-month statutory period, when the Council is open to legal challenge, to ensure no costs are incurred

Human Resources

53. Any changes that may be needed to the current structure and /or recruitment activity to implement the targeted additional licencing scheme would be carried out in accordance with the council's workforce change and resourcing policies.

One Planet Council / Equalities

54. A One Planet Council, including an equalities assessment, has been completed for this report and is attached at Appendix 7. By implementing the Additional Licensing scheme we will be taking a reasonable and proportionate approach in line with the evidence base and the outcome of the statutory consultation.

Legal

55. 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 - 60 Housing Act 2004.
56. 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 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).

57. 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 they take any other course of action as well).

58. Section 58 provides that designations for additional licensing schemes need to be confirmed by the Secretary of State unless they are made under a general approval issued by the Secretary of State. Where a designation has been made under a general approval it cannot come into force until at least three months after the designation is made.

Section 59 specifies that as soon as designation is made by the authority, they must publish in a prescribed manner a notice stating:

- that the designation has been made,
- whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under Section 58 applied to it (giving details of the approval in question),
- the date on which the designation is to come into force, and
- any other information which may be prescribed.

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).

59. 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 the operation of a designation “from time to time” (Section 60 Housing Act 2004).
60. Licences do not automatically transfer on sale or death of landlord (Section 68 Housing Act 2004).
61. Any / all enforcement action take regards unlicensed HMOs / non-compliance with HMO conditions must be in accordance with the Council’s relevant enforcement policy.
62. 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.
63. YRLA have raised concerns about the consultation process and the proposals. These concerns have been carefully considered by officers. Issues have been addressed in Appendix 6. Officers are confident that they have complied with legislative requirements and government guidance in reaching the decision to recommend the proposed Additional Licensing scheme and that the proposed designation is open to the Council as a matter of law. For the purposes of Section 58, the designation does not need to be confirmed by the Secretary of State to be effective.

Property

64. None

Public Health

65. 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 an Additional Licensing Scheme. We believe that this option will lead to fewer accidents in the home, less incidents requiring the use of health services due to faulty or dangerous appliances and provide a better environment that reduces the spread of infectious diseases.

Risk Management

66. The statutory consultation to designate an Additional Licensing scheme has been completed to ensure our compliance with legislation and statutory guidance, minimising the risk of legal challenge.

Contact Details

Author:

Ruth Abbott

Healthy and Sustainable Homes
Manager

Andrew Bebbington

Housing Policy Officer

Michael Jones

Head of Housing Delivery and Asset
Management

Corporate Strategy and City Growth

Specialist Implications Officer(s)

Legal

Sandra Branigan, Senior Solicitor

Finance

Patrick Looker

Finance Manager

Public Health

Fiona Phillips

Assistant Director of Public Health

Human Resources

Kay Crabtree

HR Manager (Performance and
Change)

Chief Officer Responsible for the report:

Report

Approved



Date

19/07/2022

Tracey Carter

Director of Housing, Economy and
Regeneration

Wards Affected:

Hull Road;
Guildhall;
Fishergate;
Clifton;
Heworth;
Micklegate;
Osbalwick and Derwent; and
Fulford and Heslington

Appendices:

Appendix 1 – Consultation Report: Considering the case for additional licensing of houses in multiple occupation

Appendix 2 – Additional Licensing Consultation Results

Appendix 3 - Draft Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2022

Appendix 4 – HMO Amended Licensing Fees

Appendix 5 – HMO Amended Licensing Policy 2022

Appendix 6 – Ward Analysis

Appendix 7 – One Planet Assessment