

**Report of:** Mike Brook, Service Manager, Private Sector Housing.

**Report to:** Director of Environment and Neighbourhoods

**Date:**

**Subject:** Mandatory Licensing of HMO's (Houses in Multiple Occupation)

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### Summary of main issues

1. The Housing Act 2004 introduced the Mandatory Licensing of certain high risk houses in multiple occupation, of which it is estimated there are in excess of 3,000 in Leeds.
2. After detailed preparatory work to identify likely workloads and demands, a fee structure was implemented following Executive Board approval in 2005.
3. The Act came into operation in 2006 and licence applications were processed. Once issued a licence is effective for a maximum of 5 years. The Act enables Local Authorities to charge a fee to provide a licence to enable the service to be run at a nil cost to the Authority. The first phase of licensing was operational between 2006 to 2011 with the second phase covering the period 2012 to 2017.
4. The second phase of licensing is now nearing completion and it is necessary to prepare for phase 3 of licensing. All existing licence holders are required to make an application to renew their licence so that it can run concurrent with the existing licence.
5. The second phase of licensing was predicted to cost £1,702.793 to administer and run the scheme. The total income generated from fees is predicted to be sufficient to enable the scheme to be run as cost neutral and thus avoiding any budget pressure on the authority.

6. It is now necessary to determine an appropriate fee structure for phase 3 that will also accurately reflect the work demands and that will cover the actual costs of administering the service over the coming 5 years.

## **Recommendations**

1. That the Director, Environments and Housing, note the contents of this report and approve the implementation of a further phase of mandatory HMO licensing in Leeds.
2. That the Director, Environment and Housing, consider the options provided regarding fee income and approve option 3 as the new fee structure for phase 3 of HMO Licensing.

### **1. Purpose of this report**

- 1.1 This report details proposals to fulfil the Council's obligations in respect of the mandatory licensing of HMO's under the provisions of the Housing Act 2004 including the approval of a new licence fee.

### **2. Background information**

- 2.1 The Housing Act 2004 introduced a number of major changes to the regulation of standards in the controls of private housing sector and the way Local Authorities assess housing conditions of all tenures.
- 2.2 The Act also introduced a new definition for a House in Multiple Occupation – HMO - and placed a duty on all Local Authorities to licence “high risk” HMOs which the Government indicated as dwellings that are 3 storeys or more and have 5 or more occupiers forming 2 or more households. The licences were issued following application and were set for a 5 year period
- 2.3 The Leeds House Stock Condition Survey (2007), estimated that there are approximately 3,000 (+/- 10%) high risk HMOs which are subject to mandatory licensing in Leeds. This figure is also validated through intelligence gained by the service over the last 10 years. Each of these properties are separately licenced with detailed conditions attached to the licence. The persons managing the HMO also have to be a fit and proper person as detailed by legislation.
- 2.4 As at the end of November 2016 the HMO licensing team has processed over 3,300 licence applications/variations as part of phase 2 of HMO Licensing and there are currently 2,692 live HMO licences in operation. Leeds is the leading authority in the country regarding HMO licence applications.
- 2.5 The Government recognise that the mandatory licensing of HMOs has a financial implication and therefore Local Authorities are able to charge a fee to licence each premises. The fee level is at the Authority's discretion but should be set at a level that will enable it to recover all its costs for the service but it is not expected to generate additional income.

2.6 The second phase of Mandatory HMO licensing is nearing completion and therefore it will be necessary for landlords to apply for a new licence to ensure they continue to fulfil their statutory duties.

### **3. Main issues**

3.1 The first two phases of licensing in Leeds has been largely successful with the vast majority of high risk HMO's now licensed. The procedures in Leeds have been highlighted nationally as examples of good practice.

3.2 The service is however, very complex and this requires experienced staff to administer long and complicated legal practices prescribed by central government. This, along with the substantial size of the HMO market in Leeds, means that the service requires significant resources.

3.3 Government intention was for HMO licensing to be cost neutral to local authorities and allowed for Council's to charge a licence fee to cover the anticipated costs. No national fees structure was proposed and it was left to each individual Council to determine its own procedures and relevant fee structure.

3.4 The HMO Licensing Team has been continuously reviewed and efficiencies implemented to ensure that consultations and calculations for the implementation of phase two in 2012 resulted in a balanced spreadsheet. This has ensured that the service has been achieved in a cost neutral manner and there will be no budget pressure on the Authority and if there is any small surplus, this will be re-invested into phase 3 of HMO Licensing.

3.5 The legislation does not allow the licence holder of an expiring licence to simply 'extend' the licence for a further period. Instead, it is necessary for all licence holders to make a renewal application for a licence to run for another five year period from the expiry date of their existing licence. The Government has now introduced a simplified renewal form for landlords to complete whereby they can confirm circumstances remain unchanged. However, the local authority still have to undertake a full process of application administration as prescribed in the Housing Act 2004 and thus the overall process is still complex and bureaucratic.

3.6 Detailed preparations are underway by the HMO Licensing Team to review existing practices and procedures to streamline the process as far as possible and achieve maximum efficiencies. In addition, staffing levels have been reduced to a level commensurate with the anticipated workload based on intelligent property information gained over the previous 5 years.

3.7 Part of these discussions involve a review of the existing fee bands/structure and ability for landlords to make part or all their application on-line. These proposals are aimed at simplifying the process and making the process and costs clear and transparent.

3.8 Full consultation has taken place with all key stakeholders including Finance, Legal and private rented sector representatives over proposals and fee structure.

- 3.9 It is necessary to make certain assumptions when determining an appropriate fee structure and to some degree accept an element of risk. Furthermore, the exact number of licence applications expected is not a certainty and there is a potential risk that we may over or underestimate the true number of applications.
- 3.10 In addition, Government is currently undertaking consultation with all parties regarding the potential to increase the scope of Mandatory HMO Licensing. Early indications suggest that the remit will be extended to include smaller HMOs of fewer than 3 storeys although the qualifying criteria, of 5 or more tenants, is likely to remain.
- 3.11 The Government has yet to confirm its proposals and it is not possible to accurately predict the potential impact on HMO licensing in Leeds at this stage. It is expected that any new proposals will be implemented in October 2017 with a six month lead in period, with implementation from April 2018. However this proposed time scale is subject to change.
- 3.12 With this in mind, the preparations for stage 3 of HMO Licensing have to progress given the known existing criteria and any future amendments will have to be factored in at a later date if necessary.
- 3.13 Therefore, taking account of the above issues and based on predicted levels of high risk HMO's and detailed analysis of the likely costs to administer a scheme over the coming 5 years it has now been possible to calculate potential fee structures. The tables below demonstrate the existing fee structure compared with the options for new proposals which take account of improved efficiencies and likely numbers of licence applications:

**3.14 Table 1 – Existing fee structure:**

The fee levels determined at phase 2 were considered to be fair and equitable to all and ensured that the HMO licensing services would be self funding. It gave some reward to accredited landlords and reflected cost by property size.

<b>Property Type</b>	<b>HMO Licence Fee (Accredited Landlord)</b>	<b>HMO Licence Fee (Non-accredited Landlord)</b>
5-6 Occupants	£583.45	£700.14
7-8 Occupants	£749.27	£908.96
9-14 Occupants	£1,105.49	£1332.73
15-19 occupants	£1,228.32	£1,455.56
20 + occupants	£1,351.15	£1,578.39

**3.15 Proposals for a new Fee structure:**

The likely cost of the service over the next 5 years has now been calculated based on known criteria such as staffing, anticipated running costs and information provided by colleagues in Finance. However, it is not known exactly how many new licence applications will be received and it is therefore necessary to make educated assumptions based on anecdotal evidence and gathered intelligence.

- 3.16 Discussions with interested parties, including the Universities and landlord associations indicate that the existing number of licensable HMOs is unlikely to differ significantly over the coming years based on the existing legislation. In view of this, the cost of the service and resource implications has been calculated on the assumption of a stable number of licensable HMOs (currently circa 2,700 live licences and in excess of 3,800 applications in total).
- 3.17 Assessment of HMO Licensing over the first 2 phases has identified that the vast majority fall within the smaller high risk bandings of property sizes (below 8 bedrooms). Analysis identified that the top 2 sized bandings represented less than 1% of all licensed properties. Therefore, to help improve efficiencies and make the process more equitable and transparent, it is proposed to reduce the number of property size bandings from 5 to 3 by merging the top 3 bands to create just 1 larger property banding.
- 3.18 It should be noted that merging the top bandings is not intended to be seen as providing additional discounts to large property owners. In total, only 112 properties are included in the top 3 bandings and of these, only 6 will see any reduction in fees. The overall increase in fees for phase 3 will also limit any reduction to either £21.68 or £151.15 over the 5 year period depending on whether they are accredited landlords. The new bandings will simplify the application for landlords and allow the Council to process applications more efficiently, saving time and resources.
- 3.19 As a result, the new bandings would be 5-6 beds, 7-8 beds and 9+ bed properties. The cost of administering the application and inspection process is increased dependent upon the property size based on additional time taken to complete the process.
- 3.20 The total cost of the next 5 year phase of licensing has been calculated by Finance to include all administrative, management and accommodation costs. A full review of phase 2 costings also identified expenditure not previously taken into account, including legal charges and staff and management time. The calculations below now reflect a more accurate cost of the HMO licensing service:

	<b>Phase 2</b>	<b>Phase 3</b>
Staffing	1,177,369	1,355,472
Admin	0	126,278
Premises	54,249	58,871
Supplies & Services	63,324	135,509
Transport	49,301	
Legal		40,935
Management time		90,803
Central Recharges	358,550	301,156
<b>Total</b>	<b>1,702,793</b>	<b>2,141,735</b>

### Fee Structure Options:

Property size	Approx. number	Existing Phase 2 License Fee	
		Fee	Total Income
5 – 6 bed LLAS	827	£ 583.45	£ 482,514
	1007	£ 700.14	£ 705,043
7 – 8 bed LLAS	248	£ 749.27	£ 185,820
	212	£ 908.96	£ 192,699
9 – 14 bed LLAS	55	£ 1,105.49	£ 60,802
	51	£ 1,332.73	£ 67,969
15 – 19 bed LLAS	3	£ 1,228.32	£ 3,685
	2	£ 1,455.56	£ 2,911
20 + bed LLAS	1	£ 1,351.15	£ 1,351
	0	£ 1,578.39	£ -
	2,618		
			<b>£1,702,794</b>

Option 1 Using previous fee structure and bands		
Revised Fee	£ increase	%-age increase
734	150	25.78%
881	180	25.78%
942	193	25.78%
1,143	234	25.78%
1,390	285	25.78%
1,676	344	25.78%
1,545	317	25.78%
1,831	375	25.78%
1,699	348	25.78%
<b>£2,141,74</b>		

## Option 1

This would see the original structure maintained and would require a standard percentage increase in fee costs across all property band sizes to create the necessary income to cover the cost of the service. The top property bandings are retained and yet realise very little income as very few such properties exist in the city. In this scenario, the smaller properties are then faced with a much higher increase in fees for phase 3 in order to raise the necessary income. This is an issue often raised by the landlord associations as they perceive this as being unfair to the majority of landlords.

Property size	Option 2 –Simplified version with new bands			Option 3 - Simplified version with new bands		
	<i>Revised Fee</i>	<i>£ increase</i>	<i>%-age increase</i>	<i>Revised Fee</i>	<i>£ increase</i>	<i>%-age increase</i>
<b>5 – 6</b>						
LLAS	650	67	11.41%	675	92	15.8%
	750	50	7.12%	825	125	17.9%
<b>7 - 8</b>						
LLAS	900	151	20.12%	850	101	15.3%
	1000	91	10.02%	1000	91	10.1%
<b>9 +</b>						
LLAS	1200	95	8.55%	1200	95	8.6%
	1300	-33	-2.46%	1350	17	1.3%
<b>9 +</b>						
LLAS	1200	-28	-2.31%	1200	-28	-2.2%
	1300	-156	-10.69%	1350	-106	-7.3%
<b>9 +</b>						
LLAS	1200	-151	-11.19%	1200	-151	-11.2%
	<b>£2,080,800</b>			<b>£2,140,200</b>		

## Option 2

This uses the new property banding structure with only 3 separate fee charges. The level of fee increase has been kept to a minimum but this then leaves a potential deficit of nearly £61K over the 5 year period and is not predicted to be sufficient to produce a cost neutral service. This option also only allows for a smaller incentive (£100) for landlords to be members of an accreditation scheme.

### **Option 3**

Again, this uses the new simplified fee structure. The fee increases are again less than phase 2 increases but also provide a significant incentive to landlords to attain accreditation membership. Any accredited landlord would be eligible for a £150 reduction in fees and this would then also support the proposals for the new Leeds Rental Standard. This fee structure would effectively also produce a cost neutral service and there would be no expected budget pressure on the service.

Officers consider this to be the most appropriate option as it simplifies the process, shares the fee costs more equitably and yet still provides an added incentive for landlords to become accredited.

- 3.21 HMO licences are issued to applicants/landlords in their name and for the property they wish to be the named as licence holder. If a landlord sells a property, the licence is not transferable and needs to be formally revoked by the service of legal notices as prescribed by the Housing Act 2004. If the new owner continues to operate the property as a licensable HMO then he /she must apply to the authority for a new licence in his/her name. The price for processing this new licence has been charged at £150.00. The landlord in return receives a licence which will expire at the same time as the original licence issued to the previous licence holder. It has been recognised that this fee of £150 does not cover the cost of this service. As such it is proposed that there be an increase from £150 to £175.00 per application. This fee relates to one application and the issue of one licence.
- 3.22 If fee increases below the proposed levels are introduced, then it will be necessary for the Council to be prepared to part subsidise the service through the general revenue account

## **4.0 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 Licensing of high risk HMOs is a mandatory function for an authority. However, the procedures, forms and fees charged are at the discretion of each individual authority. In view of this, a wide consultation process has taken place involving all major stakeholders, including colleagues in Finance, Legal, and key representatives from the private sector itself.
- 4.1.2 The procedures developed and the proposed fee structure represents an agreed position of the key interested parties.
- 4.1.3 Consultation has taken place with the Lead Member regarding this proposal.



## **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 The private rented sector now represents over 20% of the city's housing stock and houses some of the most vulnerable households in the city. The effective licensing of high risk HMO's across the city will achieve improved quality of housing and management standards for all private tenants and improve the quality of housing choice.
- 4.2.2 The service operates within an equality framework procedure.

## **4.3 Council Policies and City Priorities**

- 4.3.1 The licensing of high risk HMO's is a mandatory function and plays a key part of the regulation of housing in the private sector. This activity is central to the key priorities of the Council and is part of the Private Sector Housing Assistance Policy.
- 4.3.2 The Council has an ambition to be the "Best City". One determiner of achievement will be whether or not the city has a housing offer that meets the ambition of "Best City". The Private Rented Sector is a key market in the provision of housing in the city. The Council has a clear regulatory role in this sector to ensure that standards are maintained and tenants have access to a safe, warm and secure home. The continued implementation of Mandatory HMO Licensing is a key tool with which to regulate the sector by allowing the Council to better target its' resources on the poorest accommodation.

## **4.4 Resources and Value for Money**

- 4.4.1 There are potential cost implications to the Council in that it is imperative to predict the likely expectations on the service in order to accurately determine a fee structure to cover the cost of the service. If this assessment is not sufficiently accurate then it may lead to a budget pressure.
- 4.4.2 A full analysis of the service and its delivery has been undertaken to identify efficient working practices and the optimum staffing levels to deliver the service.
- 4.4.3 A detailed cost analysis of the proposed HMO licensing process, based on best available data, has been undertaken to enable a licence fee to be calculated to balance the cost of the service.

## **Legal Implications, Access to Information and Call In**

- 4.4.4 The report is not eligible for call-in.

#### **4.4.5 Risk Management**

- 4.4.6 The HMO licensing process is a mandatory function and is a duty that the authority must undertake. The risk involved is in producing a fee structure to balance the predicted cost of the service, compared against the likely demands on the service, over a future 5 year period. Failure to accurately predict these elements may lead to a significant budget pressure.
- 4.4.7 An unknown element at this stage is the Government's proposal to widen the criteria for Mandatory HMO Licensing. Officers believe that the proposed new fee structure could be utilised to cover any such changes to enable the service to continue to be operated on a cost neutral basis.

### **5 Conclusions**

- 5.1 Leeds City Council is at the forefront of HMO Licensing. It has the most Licensable HMO's of any local authority in England and has operated successfully in consultation with its landlords in order to implement the scheme and maintain it throughout the first licensing terms. The council has been recognised as being at the forefront of prosecutions in this area in relation to landlords who have either evaded licensing, kept tenants in poor conditions or not complied with licence conditions. Fundamental to this work is the programmed post-licence inspection regime and proactive work undertaken to find those landlords evading licensing.
- 5.2 The second phase of HMO Licensing is now nearing completion and analysis indicates that the fee income generated will be sufficient to meet the costs of the service. This means there will be no budget pressure on the service as a result of this process. Ongoing reviews of the service and the way it operates have identified efficiencies and savings to ensure it operates effectively.
- 5.3 The opportunity exists to simplify the process further by reducing the property bandings and yet keep any potential fee increase to a minimum. It is also possible to use the fee structure to incentivise landlords to become accredited through the new Leeds Rental Standard by offering significant discounts to scheme members.
- 5.4 Officers consider, based on best available data and appropriate consultation that it is reasonable to predict a similar number of licence applications during phase 3 of HMO Licensing based on existing legislation. However, the proposals of Government to extend the scope of HMO Licensing may impact on these calculations at a later date.
- 5.5 Officers consider that any future extension to the scope of Mandatory HMO Licensing can be accommodated within the proposals for a new fee structure.

### **6 Recommendations**

- 6.1 That the Director, Environment and Housing, note the contents of this report and approve the implementation of a further phase of mandatory HMO licensing in Leeds.

That the Director, Environment and Housing, consider the options provided regarding proposed fee structures and approve option 3 as the new fee structure for phase 3 of HMO Licensing.

## **7 Background documents**

7.1 None.