



Report of the Director of Environment and Neighbourhoods

Scrutiny Board (Environment and Neighbourhoods)

Date: 12th January 2009

Subject: Update on Houses in Multiple Occupation (HMO) Mandatory Licensing

Electoral Wards Affected: All

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 Introduction

- 1.1 An earlier paper has already been submitted to the Board as part of its inquiry into Private Rented Sector Housing giving a brief on the legislation covering the private rented sector (PRS), including the use of Mandatory, Selective and Discretionary licensing provisions in the Housing Act 2004 (The Act). This paper provides a progress report regarding Mandatory Licensing, including the main issues currently impacting on the delivery of the service in Leeds.

2.0 Current Status with HMO Mandatory Licensing:

- 2.1 The Housing Act 2004 introduced the mandatory licensing of certain high risk houses in multiple occupation (HMOs). The Act was implemented on 6 April 2006 and gave a period of 3 months from the implementation date for applications to be made for a licence after which time it became an offence to operate a licensable HMO without having made an application. A licence once issued lasts for 5 years.
- 2.2 The Act redefined the term HMO for the purpose of housing legislation. The actual definition of an HMO is complex as is that of a licensable HMO, but in simplistic terms a licensable HMO is a house where there are 5 or more persons, comprising of at least 2 households and the accommodation is on 3 or more storeys.
- 2.3 The results of the Leeds House Condition Survey in 2007 undertaken by Consultants commissioned by the Council have recently become available. Having regard to the definition of a licensable HMO in the Housing Act 2004 the consultants advise that there were at that time an estimated 3000 licensable HMOs within the City, give or take 10% for estimating purposes. Therefore the range was between 2700 and 3300 licensable properties.

2.4 By the end of December 2008 Leeds had received a total of 3058 applications for licensing. Of these applications only 125 are in respect of bedsit properties with the remaining relating to shared housing which are predominantly located in NW Leeds.

Licences Issued	2597
Variations issued	60
Received	13
Withdrawn	245
Being processed	143
TOTAL	3058

2.5 From the above figures it can be seen that there are 2597 confirmed licensable HMOs , plus a further 156 either recently received or currently being assessed, bringing the potential number licensed to 2753. This suggests that there are several hundred unknown properties operating somewhere in the city without a licence.

2.6 The HMO team has largely concluded the administrative processing of the majority of applications and is now focussing on inspection and licence compliance . Inspections are priority rated over the 5 year period of the licence, with higher priority being afforded to bedsit type accommodation often housing the most vulnerable households. At this early stage of inspection joint landlords of one particular HMO housing vulnerable tenants have been prosecuted and been found guilty of failing to comply with licence conditions or achieve even basic standards. Their licence was revoked and the property was subject to emergency prohibition and enforcement action. Further recent inspections have identified four more properties where prosecution action is being taken.

2.7 Currently the first phase of inspection for the high risk properties is nearing completion and it is anticipated that priority will move to the shared housing market which represents the majority of mandatory HMO licences granted in Leeds.

3.0 Issues Affecting the Implementation of Mandatory Licensing:

3.1 Leeds has been broadly successful in implementing mandatory licensing and has received and responded to more mandatory licence applications than any other local authority in the country. However, the task has not been easy and currently the Building Research Establishment (BRE) are undertaking a national review of mandatory licensing on behalf of the Department for Communities and Local Government (CLG). This review is aimed at fundamentally assessing the effectiveness of mandatory licensing as a tool for tackling poor housing conditions and ineffective management of properties by landlords. This authority has been at the forefront of implementing the powers and has therefore submitted a response to BRE detailing our thoughts on the process, some of which are critical. A copy of the response is attached as Appendix 1, however, the main points can be summarised as follows:

Concerns:-

- Lack of sufficient Government consultation with key stakeholders prior to implementation,

- The Government neglected to provide standard forms or draft licences to authorities thus causing inconsistencies and unnecessary delays,
- Introduction of changes to the legislation soon after implementation causing disruption, lack of trust from landlords and extra costs,
- A very bureaucratic process that is very resource intensive,
- Lack of detailed advice and support to local authorities thus causing authorities to interpret legislation in different ways,
- It appears that the better landlords, such as those already in accreditation schemes, are the ones cooperating and the rogue landlords are still trying to avoid licensing,
- Some of the process has very strict criteria and is inflexible in its application.

Positive Aspects:-

- The process has helped raise the profile of the PRS and provided a platform to promote higher housing standards,
- The process has provided the authority with a comprehensive list of licensable properties and landlord details,
- It has helped develop better extensive networking between key stakeholders and partners,
- The licence conditions have helped raise fire safety and amenity standards in the PRS,
- It has seen the introduction of compulsory training for landlords on managing properties,
- The self financing nature of the service has seen the development of new and efficient ways of dealing with a complex administrative process.

- 3.2 **Fire Safety complications** – It is important to note that one major problem that has occurred has been the late introduction of national fire safety guidance in July 2008, after the majority of licences have already been issued with locally developed fire safety standards as licence conditions. Prior to implementation, this Authority consulted widely with a range of key stakeholders, including West Yorkshire Fire and Rescue Authority (WYFRA), other local authorities and various landlord associations to develop an effective fire safety protocol. This protocol was formally adopted and formed the basis for licence conditions on high risk HMO's. Regrettably, CLG then issued national guidance two years after the initial implementation date that, in some circumstances, specified less onerous fire safety requirements for certain premises. This has caused considerable unrest with many landlords and the authority is now working closely with all stakeholders to develop new agreed standards and also a protocol to enforce the existing licence conditions.
- 3.3 The effect of the introduction of new national fire safety standards has been to postpone the inspection of certain shared housing (Cat B properties) pending new standards being formally adopted by the Council. This adoption procedure is almost complete but there are many challenges ahead in relation to mandatory HMO licensing as a result of these changed standards. Development of new licences, advisory notes, licence application form and standard letters must now be undertaken. In addition, it may be the case that each property will require a pre-licence inspection to determine the type of licence to be granted, and it is anticipated that some landlords will want their existing licences varying to reflect the new standards, all of which will have serious resource implications.

4.0 Management Orders:

- 4.1 Local authorities have a legal obligation, under the Act, to serve Interim Management Orders (IMO's) or Final Management Orders (FMO's) on licensable properties in the following two situations. Firstly, where for whatever reason(s) there is no reasonable prospect of a property being licensed in the near future and secondly where the health, safety or welfare of the occupants, or potential occupants, is at risk.
- 4.2 The Act also enables authorities, at their discretion, to introduce both Additional Licensing of other HMO's (not within the mandatory licensing definition) and the Selective Licensing of the whole of the PRS in certain situations in defined areas of an Authority. If an authority applies for and is granted these powers then the Authority needs to be in a position to implement both IMO's and FMO's where the need arises.
- 4.3 The Act also introduces Empty Dwelling Management Orders (EDMO's). These powers are also discretionary and apply to properties that have been fully unoccupied for at least 6 months and where there is no reasonable prospect of them becoming occupied in the near future. The powers enable the Authority to take over the management of the empty property to ensure it becomes occupied.
- 4.4 The Council has sought to develop a partnership arrangement with an external provider that could take on the role of "nominated manager" in the event that the Council needed to invoke the Management Order provisions. However, the process of organising and agreeing partnership working has proved to be very difficult. Initially, the Authority discussed the option with a range of providers, internal and external agencies (such as ALMO's, RSL's and accredited landlords) as well as with neighbouring authorities to try and develop a partnership arrangement across West Yorkshire, but no expressions of interest were received. The Authority is now in the process of again trying to developing a local framework agreement and has issued invitations to tender to a number of potentially interested organisations. It is hoped to have a formal contract agreement in place with more than one provider in the near future. This is particularly important in the present financial climate as many buy-to-let investors are struggling to maintain their portfolios and it may be necessary for the authority to take control of a "number" of properties at short notice.

5.0 Additional Licensing:

- 5.1 A previous briefing paper has already been provided to Scrutiny Board on the legislative requirements of both Additional and Selective Licensing options.
- 5.2 When considering Additional Licensing an authority has to demonstrate how it would work in conjunction with existing initiatives such as accreditation and partnerships. Licensing is not a stand alone tool and landlords will need adequate support to help deal with problem tenants. Authorities should have active outreach support programmes to engage with landlords and tenants who need their assistance.
- 5.3 Officers currently consider that Mandatory HMO Licensing is still the main priority at this time and is likely to remain so in the near future. Resources are currently targeted at fulfilling the mandatory requirements and undertaking proactive work, city wide, to identify those landlords failing to comply with Mandatory Licensing. Part I of the Housing Act 2004 introduced the Housing Health and Safety Rating System

(HHSRS), which allows for poor housing conditions to be addressed wherever they are encountered, without the need for additional licensing to be adopted, and individual complaints of poor housing conditions received by the team are investigated and remedies sought under these powers. Additional Licensing, if adopted, may be better targeted at certain property types, specifically poorly converted flats, or within areas of poorer housing and multiple deprivation rather than in the traditional student area of North West Leeds that is already well regulated. Once mandatory licensing obligations have been largely met, further consideration to additional licensing will be appropriate.

6.0 Selective Licensing:

- 6.1 Selective Licensing is an option for the Authority to adopt, subject to approval from Government Office, to address a defined area of privately rented properties that is, or is likely to become, an area of low demand or is an area experiencing significant and persistent problems of anti-social behaviour attributable to the private rented sector. Selective licensing can not be introduced in isolation but must be part of an overall regeneration proposal of an area. Once approved a landlord would need a licence to operate.
- 6.2 The aim of selective licensing is:
- To complement the other regeneration initiatives within the area,
 - To improve the management of the PRS within the area,
 - To improve demand for the area and support both tenants and landlords and the local community,
 - To contribute to a sustainable community and neighbourhood.
- 6.3 Selective licensing applies to properties in the PRS and does not apply to owner occupiers, Housing Association properties or ALMO accommodation.
- 6.4 Officers have identified an area of PRS housing located in the Cross Green and East End Park district of the city as a potential selective licensing area. In line with the above criteria a full consultation period has taken place and as a consequence a detailed business case was submitted to Government Office (Communities and Local Government – CLG) on 22nd May 2008. The CLG have since responded seeking further information and further details and subsequent meetings have taken place following concerns raised by the Leeds Residential Landlords Association who have objected to the proposals. The Authority has now responded in full to the CLG and we await the decision which should be announced early in the New Year.

7.0 Recommendations

- 7.1 The Board is asked to note the contents of this report.

Background Papers

None