

Subject: Private Sector Housing – Discretionary licensing proposed fee structure and licence conditions

Date of Meeting: Housing and New Homes Committee 20 September 2023

Report of: Executive Director Housing, Neighbourhoods and Communities

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Ward(s) affected: All wards

For general release

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The significant growth in the private rented sector in Brighton & Hove means just under one in three households in the city are renting privately. While many landlords operate responsibly, there are concerns that some do not. As a result, issues are raised in relation to the management, standards and quality of homes in this expanding sector.
- 1.2 On 15 March 2023 Housing Committee considered a report on the extension of discretionary licensing in the local authority area. It agreed the recommendation to consult on an additional licensing scheme for smaller Houses in Multiple Occupation (HMOs) citywide and the introduction of a Selective Licensing Scheme for non-HMO private rented sector homes in 4 wards in the city. In addition, it was agreed to consult on the option of a further Selective Licensing Scheme in 13 wards in the city.
- 1.3 This report:
- Outlines the proposed fee structure for a Selective Licensing Scheme and Additional HMO Licensing Scheme and provides updated fees for the Mandatory Scheme for larger HMOs.
 - Presents draft conditions for a Selective Licensing Scheme and updated conditions for the Additional Licensing Scheme and Mandatory Scheme for HMOs
 - Highlights the approach to consultation due to take place in autumn 2023.

2. RECOMMENDATIONS:

That Housing & New Homes Committee:

- 2.1 Approve for consultation the proposed fee structure for a Selective Licensing Scheme and Additional HMO Licensing Scheme.
- 2.2 Approve the updated fee structure for the Mandatory HMO Licensing Scheme.
- 2.3 Note the draft Selective Licensing Scheme conditions and updated Additional HMO Licensing Scheme conditions attached at Appendix 1 and 2.
- 2.4 Note the updated conditions for the Mandatory HMO Scheme attached at Appendix 2.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Housing Act 2004 gave councils the power to introduce additional HMO licensing and selective licensing of privately rented properties. Essentially, for improved property management and conditions for tenants and the local community in certain circumstances. The 5-year term of the city's previous Additional House in Multiple Occupation (HMO) Licensing Scheme (for smaller HMOs not covered by Mandatory HMO Licensing) ended earlier this year. The Additional Scheme covered around 1,900 smaller HMOs and allowed us to work closely with landlords to improve properties. A number of licence conditions were set during the Additional Scheme. This resulted in direct improvements to properties. Subsequently, the health and wellbeing of around 5,500 tenants, as well as homes becoming safer environments, was improved.
- 3.2 Housing Committee on 15 March 2023 approved the recommendation to go out to consultation on the preferred option for private rented sector discretionary licensing across Brighton & Hove with persons who are likely to be affected by the designation. Having considered the evidence base the preferred option agreed was:
 - Citywide additional HMO licensing covering properties which have two or more storeys and where three or more tenants are living there as more than one household.
 - Selective licensing on non-HMO private rented sector homes in the 4 worst affected wards where the evidence demonstrates a clear link between poor property conditions, deprivation and private rented homes. These wards are Kempdown, Moulsecoomb & Bevendean, Queens Park and Whitehawk & Marina.
- 3.3 In addition, it was agreed to consult on a further option to extend the scheme in 13 wards in the city on the grounds of poor property conditions. These wards are Brunswick & Adelaide, Central Hove, Goldsmid, Hanover & Elm Grove, Hollingdean & Fiveways, Preston Park, Regency, Rottingdean & West Saltdean, Round Hill, South Portslade, West Hill & North Laine, Westbourne & Poets Corner and Wish. If approved, this would form a second phase of the scheme and would be subject to Secretary of State approval.

- 3.4 Since March, extensive research has been undertaken to develop the consultation proposals for this report and Committee was advised in March that a budget of £120,000 had been identified for this stage of the process. It is the aim of any licensing scheme to be self-financing, and therefore, any costs are paid from the license fees. However, depending on the outcome of the consultation, a scheme may need some upfront funding which could require budget approval. Officers will, therefore, need to report back to Committee following the consultation phase.

Selective Licensing Scheme conditions

- 3.5 During the proposed scheme all landlords or letting or managing agents on behalf of a landlord, would be required to obtain a licence for each property that they let (with some exemptions that apply under the Housing Act 2004). The proposed licence holder would need to demonstrate they are a fit and proper person and that conditions are met. If the property is sold during the term of the licence, it cannot be transferred to another person and a new application would need to be made.
- 3.6 The conditions attached to each licence would relate to the management of the property. Under the Housing Act 2004, several conditions are mandatory. They include:
- Producing an annual gas safety certificate, if gas is supplied to the property
 - Keeping electrical appliances and furniture in a safe condition, and producing a declaration on their safety
 - Ensuring all electrical installations are in working order and safe, and producing a declaration on their safety
 - Ensuring a smoke alarm is present on each floor level and keeping alarms in working order, and producing a declaration on their condition and position
 - Ensuring, where a gas boiler or gas fire are provided, that carbon monoxide alarms are present and keeping them in working order, and producing a declaration on their condition and position
 - Requirement to obtain references for prospective tenants
 - Supplying tenants with a tenancy agreement.
- 3.7 In addition, Housing Act 2004 allows councils to apply further conditions to regulate the management, use or occupation of the property. The council proposes to introduce such conditions to improve the management and quality of private rented homes. They include:
- Limits on numbers of persons who may occupy a property in accordance with room and space standards legislation
 - Ensuring that gas, electricity or water supplies are not interrupted at the property
 - Producing a valid energy performance certificate
 - Property inspections required at least every 6 months
 - Requiring arrangements in place for waste and recycling
 - Ensuring tenancy agreements include provision for dealing with anti-social behaviour

A copy of the proposed conditions is attached at Appendix 1.

To assist in preventing homelessness further advice will also be provided to landlords in correspondence encouraging them to contact the council at an early stage should they wish to end tenancies.

Citywide Additional and Mandatory HMO Licensing Scheme conditions

- 3.8 The council's additional and mandatory HMO conditions were last reviewed in June 2017. We look to update these conditions following changes in legislation and best practice. Similar to the proposed Selective Licensing Scheme, landlords, or letting or managing agents on behalf of a landlord, would be required to obtain a licence for each HMO under the additional licensing scheme (with some exemptions that apply under the Housing Act 2004). The proposed licence holder would need to demonstrate they are a fit and proper person and that conditions are met.
- 3.9 Again, as with the Selective Licensing Scheme, conditions attached to each additional HMO licence would relate to the management of the property. Equally, under the Housing Act 2004 several conditions are mandatory. Apart from the requirement on licence holders to obtain references for tenants, for selective licensing conditions in paragraph 3.6 of this report, conditions for additional HMO licensing match selective licensing. However, there are added conditions. They include:
- setting occupancy levels proportionate to floor areas of habitable rooms; and
 - requiring a licence holder to comply with the council's arrangements on storage and disposal of household waste from the HMO.
- 3.10 Similar to selective licensing, Housing Act 2004 allows councils to apply further conditions to regulate the management, use or occupation of licensed HMOs. The provision of facilities (bathrooms, toilets and kitchens) and fire safety precautions are key conditions. The council's updated conditions for the additional and mandatory HMO licensing schemes, showing changes from existing conditions, are attached at Appendix 2.

Selective Licensing Scheme costs and fee structure

- 3.11 If the decision is made to designate a Selective Licensing Scheme covering 4 wards in the city this would require licence applications for an estimated 4,000 properties. A second phase of the scheme for the additional 13 wards would require Secretary of State approval to implement. If that was received it would cover a further estimated 19,000 properties.
- 3.12 Legislation allows authorities to charge a fee for recovering costs to administer and run the scheme. The fee must be proportionate so that administrative support, property inspections and all other scheme-related tasks can and are funded from licence fees. The proposed fee structure is set out below based on current costs.

Standard application fee	Standard weekly fee comparison	Prompted fee
£670	£2.57	£760
Accredited/EPC rating C or above application fee (£75 discount)	Accredited/EPC rating C or above weekly fee comparison	
£595	£2.29	

Table 1 - proposed selective licensing scheme fee

- 3.13 It is proposed to set the fee at a level that would ensure full cost recovery for the scheme. In addition, a fee which is a balance between reasonable cost for licence holders against ensuring the scheme is successful, properly funded and appropriately resourced. It is intended that the fees would be reviewed on an annual basis.

The fees have been calculated taking into account existing case law and official guidance. They may go up or down before any decision on implementation due to various influencing factors so would be subject to a further committee decision.

- 3.14 Property inspections will be prioritised on risk, following review of each selective licensing scheme application received. This mirrors how other local authorities manage their inspections. In addition, research in 2022 by the Department of Levelling Up, Housing and Communities and in line with the English Housing Survey, is important to highlight.
- 3.15 This research explored compliance with legislation and other requirements by private sector housing landlords. It found 30% of landlords show good practice, 24% follow legal requirements, 35% had mixed compliance and 11% had lower compliance and awareness. Therefore, there is not complete non-compliance by landlords. Subsequently, programming property inspections according to risk is considered practical. Not all properties will be non-compliant in view of that research. In addition, for actual numbers of property inspections, then it is proposed to visit all properties for each licence application during the licence period.
- 3.16 Extensive benchmarking has taken place to understand fee structures in other local authorities who operate or who are currently consulting on Selective Licensing Schemes and share similarities with Brighton & Hove. More information on this benchmark group and the fees applied are set out in Appendix 3.
- 3.17 Our proposed fee is lower than a number of our peers, as can be seen in Appendix 3 but not so significantly. This is partly due to our peer group of London local authorities with staff salaries benefiting a London weighting. Salaries are a significant aspect in licensing fees. In addition, from Appendix 3 it can be seen a number of authorities have early bird licence fees to incentivise timely applications. It is not proposed that we introduce this, as we are keen to ensure full cost recovery of a scheme. Conversely, the introduction of such adjustments has had mixed effectiveness when used in previous licensing schemes at other councils.

- 3.18 The fee has been calculated based on the following elements and has been assessed using the Local Government Association's toolkit to ensure cost recovery.
- Set up costs and on costs – Recruitment of suitable staff, publicising the scheme, accommodation, support services including IT services and equipment
 - Processing applications – staff costs in assessing and processing the application
 - Visits – time spent inspecting properties including travel to and from them
 - Monitoring costs – estimated staff time to do compliance checks of licence conditions
 - Administration – actual costs involved in producing and sending licences.
- 3.19 It is important to note that as referred to above, there is no existing set up budget and this would need to be identified before any scheme could start, as it is likely that there would be a lag of at least 12 months before licensing started to generate sufficient income to cover the council's on going costs. It is estimated that between £0.440m and £1.800m would be required upfront and there could be borrowing/cash flow costs associated with this (see 7.1 Financial Implications). If all schemes were to commence, an additional team of approximately 28 staff would be required.
- 3.20 We are proposing a prompted application fee. It is proposed that this would apply where a licence application has not been made proactively and the council has to investigate or do chase up work to ensure an application is made. In addition, an adjusted fee has been suggested which would apply to properties with an Energy Performance Certificate rating of C or above and to landlords who are accredited with landlord groups (these are the National Landlords Association and National Approved Letting Scheme (now safeagent and ihowz)). It is also proposed to offer assistance to landlords within the selective licensing scheme if the accommodation is used to provide accommodation for the council's Direct Lets' Scheme. This is a scheme for providing housing assistance for vulnerable households who have approached the council and struggling to access private rented accommodation.
- 3.21 Our experience to date with HMO licensing is that it has not had a material effect on the level of rents or availability of accommodation in the city. The proposed fee structure is considered reasonable. Equally, fees are fully tax deductible and over a five-year scheme would cost a licence holder less than £3 per week.
- 3.22 Under the proposed fee structure, those who fail to apply for a licence would forgo the option of a standard fee and would be required to pay £760 prompted licence fee. This is a progressive fee structure and a deliberate policy to strengthen and make licensing of privately rented property efficient. Ultimately, avoiding additional costs in identifying unlicensed properties.

Licence duration

- 3.23 Licences cannot be issued to extend beyond the end date of any designated scheme. This would be no more than five years after the scheme came into force. It ensures there is no benefit gained by those applying late and will run in line with the length of the scheme.

3.24 There would be no requirement for the council to issue a licence for the full length of the scheme. Instead, issuing a shorter licence is an alternative measure where there are outstanding planning permission or other issues at the property. In these circumstances, it is proposed that the council would generally issue a one-year licence in the first instance to allow sufficient time to regularise the planning position or other issues. Licence holders could then apply for a further licence. This would apply across the mandatory and additional HMO schemes. It may also apply to the selective licence scheme in certain circumstances. For example, before starting any works to satisfy licence conditions to a protected property or inside a conservation area.

Additional and Mandatory HMO licensing fee structure

3.25 **Table 2** and **3** below show the proposed fee structures for the Mandatory Scheme. **Tables 4 and 5** show the proposed fee structure for the Additional HMO scheme.

Table 2 –Mandatory HMO licence fees have been updated where there are 5 or more occupiers.

Number of occupiers	5	6 to 8	9 to 11	12 to 14
New application fee	£820	£840	£860	£880*
Accredited/EPC C rating or above (£75 discount) new application fee	£745	£765	£785	£805
Prompted fee	£930	£950	£970	£990
Renewal application fee	£670	£680	£690	£700**
Accredited/EPC C rating or above (£75 discount) renewal application fee	£595	£605	£615	£625
Prompted fee	£760	£770	£780	£790
*For new applications with more than 14 occupiers, add £21 for up to 3 additional occupiers (based on per room)				

**For renewal applications with more than 14 occupiers, add £11 for up to 3 additional occupiers (based on per room)

Table 3 - Mandatory HMO Licence fees have been updated for when there are 5 or more lettings.

Number of lettings	5	6 to 8	9 to 11	12 to 14
New application fee	£1,030	£1,190	£1,330	£1,470***
Accredited/ EPC rating C or above (£75 discount) new application fee	£955	£1,115	£1,255	£1,395
Prompted fee	£1,090	£1,260	£1,400	£1,550
Renewal application fee	£840	£860	£870	£890****
Accredited /EPC rating C or above (£75 discount) renewal application fee	£765	£785	£795	£815
Prompted fee	£890	£910	£920	£940

*** For new applications with more than 14 occupiers, add £28 for up to 3 additional occupiers (based on per room and one facility)

**** For renewal applications with more than 14 occupiers, add £15 for up to 3 additional occupiers (based on per room and one facility)

Table 4 - Additional HMO Licensing scheme - proposed fees for properties let on single tenancies with 3 or 4 occupants.

Standard application fee	Prompted fee
£800	£900
Accredited/EPC rating C or above	

application fee (£75 discount)	
£725	

Table 5 - Additional HMO Licensing scheme - proposed fees for properties let on multiple tenancies with 3 or 4 occupants.

Standard application fee	Prompted fee
£1,020	£1,080
Accredited/EPC rating C or above application fee (£75 discount)	
£945	

Consultation on the proposed schemes

- 3.26 A 12-week public consultation is planned to begin in late September 2023 and finish by December 2023. The consultation process has been designed to enable initial proposals to be fully considered and scrutinised by the public. The consultation should be informative, clear, and relevant, so that all details of the proposal can be readily understood. The consultation will include information on the proposed schemes, including reasons for them and how they are formulated. It will also include information on proposed fees and conditions.
- 3.27 A supplier has been appointed to assist the council with the consultation. The council will consult local residents, including tenants, landlords, managing agents, key interested parties (the Police, Fire Service and Universities) and other members of the community. This includes business owners, voluntary and community groups who live, operate, or provide services within the proposed designation areas. The consultation will also be promoted in surrounding areas that may be affected by the introduction of the proposed schemes.
- 3.28 This consultation will consist of an online survey available on the council's website and available as a printed version at council public offices and the city's libraries. Printed information will be made available in the form of posters to be displayed in libraries and other public locations in the local authority's area.
- 3.29 The council will publicise the consultation via press releases and other local media, social media, adverts in local and national newspapers and news items on its own website. To enable us to reach landlords who are not based on the local area or who may be located abroad we will look to increase publicity of the proposed schemes through national newspapers, other local authorities and property websites or international investment or property agents within the city. Therefore, showing reasonable steps are being taken to consult those who may be affected by the introduction of the schemes. In addition, officers will attend meetings with stakeholder groups. This includes landlord groups to raise awareness on the consultation.

4. ANALYSIS & CONSIDERATION OF ANY OPTIONS

- 4.1 The report on Private Sector Housing: Discretionary Licensing Evidence discussed at Housing Committee on 15 March 2023 undertook a full options appraisal on options for licensing in the city. The committee agreed to proceed with consultation on the preferred option as outlined in paragraph 3.2 of this report.
- 4.2 As outlined in paragraph 3.19 of this report in order to implement new schemes a budget will need to be identified to support the mobilisation of the scheme before licence fees are collected. A series of options have been modelled and the budget required varies according to the number of schemes introduced. Following consultation, should committee agree to commence the process then officers will need to report back to Committee on the budget required.

Option A: Mandatory HMO scheme, Additional HMO scheme plus Selective Licensing Scheme for 4 wards and a further 13 wards would require an estimated upfront budget of £1.82m.

Option B: Mandatory HMO scheme, Additional HMO Scheme plus Selective Licensing Scheme for 4 wards would require an estimated upfront budget of £680,000.

Option C: Additional HMO and Mandatory HMO scheme would require an estimated up-front budget of £440,000.

Option D: Mandatory HMO scheme only would not require an upfront budget.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Section 80(9) of the Housing Act 2004 states that prior to designating an area as subject to selective licensing the local housing authority must:
- Take reasonable steps to consult persons who are likely to be affected by the designation; and
 - Consider any representations made in accordance with the consultation and no withdrawn.
- 5.2 Section 56(3) imposes the same consultation requirements for the designation of areas subject to additional licensing. To meet these requirements the council will be undertaking a 12-week public consultation on the proposed schemes as outlined in paragraphs 3.26 – 3.29 of this report.

6. CONCLUSION

- 6.1 Should Committee agree the proposals the results of the consultation will be analysed, and consultation responses and outcomes brought back to Housing & New Homes Committee to consider and decide whether to proceed with the implementation of the schemes. If citywide additional HMO licensing and selective licensing in 4 wards is agreed, a three months' notice of the new designation would be required. On this basis, the scheme would be anticipated to be in place by July 2024.
- 6.2 It should also be noted that for selective licensing, the second phase of an additional 13 wards in the city would require permission from the Secretary of

State. It is anticipated that the application to them would be submitted 6 months after the designation of the first selective licensing scheme (if approved by committee). The Secretary of State decision should be made within 8 weeks from the date of submission of an application, but the council would have no control over this time period. It is notable that some local authorities have experienced longer waiting times for the Secretary of State's decision. If agreed, a second Selective Licensing Scheme would at the earliest be in place by Summer 2025.

7. FINANCIAL & OTHER IMPLICATIONS:

7.1 Financial Implications:

There is currently £0.120m one-off resources in 2023/24 to pay for the support and consultation necessary to introduce further licensing (discretionary and/or selective) in the city. It is paramount that this is managed within budget, given that other budgets in Housing are currently forecasted to overspend in 2023/24. Licensing fees will be set to recover costs. However, there will inevitably be some costs (such as staffing) which will be needed upfront before the license fee is collected. The service is planning to profile spending and recruitment to minimise this wherever possible.

The level of upfront costs required will vary depending on the licensing schemes that are implemented (see paragraph 4.2). Upfront costs can be paid for through internal borrowing from reserves, external borrowing or through modernisation funding. There are likely to be costs associated with lost investment or interest costs associated with borrowing. Therefore, once the consultation is completed, a further committee report will be required with full financial implications and any new revenue budget required will need to be identified.

Finance Officer Consulted: Monica Brooks Date: 6 September 2023

7.2 Legal Implications:

The report sets out the legislative framework for the introduction of additional HMO licensing and selective licensing of non-HMOs.

Meaningful consultation is an essential pre-requisite to the introduction of a selective licensing scheme. Case law has established that to be meaningful, the consultation must be undertaken when the proposals are still at a formative stage, there is sufficient information to permit "intelligent consideration", there is adequate time for consideration and response and conscientious consideration must be given to the consultation responses before a decision is made.

Lawyer Consulted: Liz Woodley Date: 7 September 2023

7.3 Equalities Implications:

In seeking to tackle poor management and quality standards, it is expected that any licensing scheme would have a positive impact on tenants including those with protected characteristics. After the consultation a full Equalities Impact Assessment would be taken in relation to any discretionary licensing scheme

recommended to Housing & New Homes Committee for approval. This assessment would incorporate the relevant findings of the stakeholder consultation to help inform decision making.

7.4 Sustainability Implications:

The evidence has identified poor property conditions in the private rented sector. Action to tackle this is expected to improve the quality of the city's housing stock, thereby improving its sustainability. An adjusted fee where the property has an EPC rating of C or above also acknowledges properties with a higher home energy efficiency which could reduce energy bills, make homes warmer and more comfortable and reduce its carbon footprint.

Any Other Significant Implications:

7.5 None

SUPPORTING DOCUMENTATION

Appendices

Appendix 1: Draft Selective Licensing Scheme Conditions

Appendix 2: Updated HMO Licensing Scheme Standards and Conditions

Appendix 3: Benchmarking comparison on Selective Licensing Scheme fees

Documents in Members' Rooms: None

Background Documents:

- Housing Act 2004
- The Selective Licensing of Houses (Additional Conditions) England Order 2015
- Department of Communities and Local Government 'Selective licensing in the private rented sector: A guide for local authorities' March 2015' (last updated 20 June 2023)