

# Brighton & Hove City Council

## Housing and New Homes Committee

## Agenda Item 62

<b>Subject:</b>	<b>Private Sector Housing – Discretionary Additional Licensing Scheme</b>
<b>Date of Meeting:</b>	<b>13 March 2024</b>
<b>Report of:</b>	<b>Executive Director Housing, Neighbourhoods and Communities</b>
<b>Contact Officer: Name:</b>	<b>Diane Hughes</b>
<b>Email:</b>	<b>Diane.Hughes@brighton-hove.gov.uk</b>
<b>Ward(s) affected:</b>	<b>All wards</b>

### For general release

#### 1. PURPOSE OF REPORT

- 1.1 This report seeks approval for a Citywide, Additional Housing in Multiple Occupation (HMO) Licensing Scheme which follows a public consultation carried out between Wednesday 4 October 2023 and Wednesday 3 January 2024.
- 1.2 This report also provides a proposed fee structure and standards and licensing conditions to apply across all HMO licensing schemes.

#### 2. RECOMMENDATIONS:

*That Housing & New Homes Committee:*

- 2.1 Notes results of the consultation on the proposed additional HMO licensing scheme, as summarised by this report and detailed in a Consultation Findings' Report by CJ Associates at Appendix 1.
- 2.2 Designates all 23 wards in the city as subject to additional licensing under s.56(1) of the Housing Act 2004 from 1 July 2024 and last for five years, as set out in paragraph 6.1 and authorises the Executive Director for Housing, Neighbourhoods and Communities to issue the statutory notification.
- 2.3 Agrees the fee structure for the licensing scheme, as set out in paragraphs 3.32 to 3.35
- 2.4 Agrees the HMO licensing standards and conditions attached at Appendix 3 which will apply to the mandatory HMO licensing and additional HMO licensing schemes.

#### 3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Housing Committee on 15 March 2023 approved the recommendation for a public consultation on citywide additional HMO licensing covering properties which have two or more storeys and three or more tenants are living there as more than one household.
- 3.2 Housing Committee on 20 September 2023 approved the recommendation for a proposed fee structure for HMO licensing and noted draft licensing standards and conditions for the scheme. Those conditions formed part of the consultation.
- 3.3 The introduction of further licensing aims to improve property conditions and management of the private rented HMO sector in the city. Benefits from a tenant, housing landlord, community and homelessness aspect are:
- Tenants – better managed, safer and fit to occupy properties resulting from the proposed licensing scheme.
  - Landlords – opportunities for growth in the private rented sector, as tenants seek good and well managed homes. In addition, improved clarity for landlords on how to provide best quality, rented housing.
  - Community – a proactive approach to improving private rented housing standards by the proposed scheme, and improved management of HMO properties.
  - Positive impacts on homelessness – by working to reduce abrupt end of tenancies using early intervention and dialogue with licence holders of the proposed scheme.
- 3.4 If the licensing scheme is not introduced there are negative outcomes for each of the benefits listed above. This is set out below:
- For tenants – the management, safety or fitness of properties is unlikely to improve.
  - For landlords – reduced opportunities for growth in the private rented sector, as tenants would have less options for good and well managed homes. In addition, landlords would not benefit on how to provide best quality, rented housing.
  - For the community – a proactive approach to improving private rented housing standards would not come, and the management of HMO properties stay unchanged.
  - For homelessness - weakened prospects of reducing abrupt end of tenancies by no direct engagement with licence holders, as the licensing scheme would not be in place

### **Public consultation**

- 3.5 During the consultation reasonable steps were taken to consult all persons who would likely be affected by the proposed additional HMO licensing scheme. In addition, consideration was given to all representations made in accordance with the consultation.

### **Preparation and timelines**

- 3.6 If a designation is made for the proposed additional HMO licensing scheme covering all 23 wards in the city then this would require licence applications for an estimated 2,200 properties.

- 3.7 It is proposed the licensing scheme, if approved, would commence on 1 July 2024 for a period of 5 years. This would allow enough time from approval, for the statutory 3 month designation period to take effect. In addition, for other preparations to be made, such as reinstating IT (from the previous scheme) and staff recruitment.
- 3.8 Paragraph 7.1 of this report outlines required resources for the scheme.

### **Converted buildings into flats**

- 3.9 For the avoidance of doubt, the proposed licensing scheme would not apply to buildings which are HMOs as defined by s.257 of the Housing Act 2004 (relating to certain converted buildings into flats). In Brighton & Hove the vast majority of converted flats have been sold to leaseholders. Rather than one person controlling the whole building, this results in a number of different people having management responsibilities when flats are sub-let to tenants.
- 3.10 There is rarely a single person with complete control of such buildings so licensing is not considered the best way of resolving any health and safety issues that may arise. The Housing Act 2004 provides other options - under Part 1 of that Act (enforcement of the Housing, Health and Safety Rating System) – to deal with such issues. It is, therefore, recommended that s.257 HMOs are excluded from the proposed HMO licensing scheme.

### **Outcome of the consultation**

- 3.11 In general, there is broad agreement from residents (housing tenants and owner occupiers) that the proposed additional HMO licensing scheme will improve management and conditions of properties. The opposite is found for housing landlords and agents. They show disagreement for the scheme on improving management and conditions of properties. However, there is not an overall majority of strong disagreement from landlords or agents.
- 3.12 CJ Associates assisted the council with the consultation. The Consultation Findings' Report by them at Appendix 1 provides further analysis of the consultation.
- 3.13 A number of consistent themes emerged throughout the consultation which are below.
- Property conditions
  - Waste disposal, noise, crime and anti-social behaviour
  - Fear of eviction from housing tenants, if reporting property conditions
  - Housing landlords and agents acting on reports of property conditions
  - Objections to the proposed HMO licensing scheme due to costs and shrinking housing supply
  - Concerns the proposed scheme will not be resourced properly
  - Enforcement of the proposed scheme is essential for it to be effective
  - Difficulty for some HMO properties to meet a C Energy Performance Certificate (EPC) rating

- Disagreement on a proposed discounted licence fee for landlords accredited with landlord groups
- Improvements required to the council's online licence application and payment system
- Guidance needed on the proposed licensing scheme for housing landlords and tenants

3.14 Further to the consistent themes in paragraph 3.13 above then responses to all themes (including consistent themes) are provided in Appendix 2. Due to the consultation feedback some changes are now made to the original additional HMO licensing proposals. These are shown in **Table 1** below. After that table there is a summarised response for each consistent theme above.

**Table 1 – Themes, pre and post consultation**

<b>Theme</b>	<b>Pre Consultation</b>	<b>Post Consultation</b>
Property conditions	Draft licensing conditions. Too much ambiguity on conditions surrounding new fire precautions or heating.	General special licence condition now removed. New licensing conditions for fire precautions and heating now proposed.
Difficulty for some HMO properties to meet a C Energy Performance Certificate (EPC) rating	Discounted licence fee. The proposed discounted fee of £75 available only for HMO properties with an EPC rating of C or above.	The discounted fee of £75 proposed to apply where an HMO property's "potential" EPC rating is met and has a rating of E or higher.
Discount for charities	Not included	The discounted fee of £75 to apply where a charity is registered with the charity commission for England and Wales

### **Theme 1: Property conditions**

3.15 It is proposed to introduce the licensing scheme to improve property conditions, as well as better management of HMO properties. In addition, properties may be assessed for any serious Housing, Health and Safety Rating System (HHSRS) hazards (Category 1 or high rated Category 2 hazards). Property repairs or improvements would be required to mitigate any serious hazards.

### **Theme 2: Waste disposal, noise, crime and anti-social behaviour**

3.16 The proposed licensing scheme will include conditions for disposal of rubbish and recycling facilities, property maintenance and requirements for written tenancy agreements which include conditions prohibiting antisocial behaviour. Licensing legislation would not allow noise or crime to be controlled by the proposed scheme but further advice on who to contact would be provided.

### **Theme 3: Fear of eviction from housing tenants, if reporting property conditions**

- 3.17 This concern is noted and the council provides advice for housing tenants on fear of or revenge eviction. We would continue to encourage tenants to report property conditions to us so action can be taken where required. In addition, the proposed scheme helps take away the need for tenants to report issues, as a landlord (or property agent) would be required to licence their property and for the council to inspect it.

**Theme 4: Housing landlords and agents acting on reports of property conditions**

- 3.18 The council welcomes landlords and agents acting on property conditions. However, there is evidence to demonstrate a significant proportion of HMOs in the city are still being managed sufficiently ineffectively.

**Theme 5: Objections to the proposed HMO licensing scheme due to costs and shrinking housing supply**

- 3.19 The council notes views raised on housing rent increases perceived to result from proposed licence application fees and how that may cause instability for the housing market. Taking into consideration licence fees and other costs, for example on works to properties, there are no reasons for rents to increase or housing supply to shrink. See paragraphs 3.32 to 3.35 for more information on licence fees.
- 3.20 Works to properties are expected to be funded by specific budgets, not by raising rental fees. Letting property is a business which requires investment and housing rents cannot be increased without good reason.

**Theme 6: Concerns the proposed scheme will not be resourced properly**

- 3.21 A number of concerns were raised on resourcing the proposed licensing scheme. Further to this report's commentary on required resources for the scheme, there will be adequate support in place. Recruitment for required additional staff will commence if the scheme is agreed.

**Theme 7: Enforcement of the proposed scheme is essential for it to be effective**

- 3.22 The council believes that the private rented sector should be well managed and that everyone has the right to live in decent, safe accommodation. This includes houses in multiple occupation. Enforcement of the proposed scheme will be in accordance with the council's Private Sector Housing Enforcement Policy. In addition, for the previous additional licensing schemes there were a number of instances where enforcement action was taken by the council. This demonstrates the council's commitment to enforcement.

**Theme 8: Difficulty for some HMO properties to meet a C Energy Performance Certificate (EPC) rating**

- 3.23 Concern was raised for some HMO properties not able to reach an EPC rating of C or above and landlords not able to benefit from the £75 discounted licence fee. It is now proposed to offer the discounted fee where: (1) a property has an EPC

rating of C or above; or (2) a property's "potential" energy efficiency rating has been met and has an EPC rating of E or higher.

- 3.24 It should also be noted that since 1 April 2022, landlords can no longer let or continue to let properties by the Minimum Energy Efficiency Standards Regulations if they have an EPC rating below E. Unless, there is a valid exemption in place.

#### **Theme 9: Disagreement on a proposed discounted licence fee for landlords accredited with landlord groups**

- 3.25 The council notes there were disagreements on proposed discounted licence fees for accredited landlords. Research completed in 2022 by the Department of Levelling Up, Housing and Communities and in line with the English Housing Survey found that 30% of landlords show good practice, 24% follow legal requirements, 35% had mixed compliance and 11% had lower compliance and awareness. Therefore, it is felt that offering discounted fees to landlords who are accredited and meet national standards of good practice, will then encourage more landlords to follow best practice. In addition, it is common for other local authorities to offer discounted licence fees for accredited landlords.

#### **Theme 10: Improvements required to the council's online licence application and payment system**

- 3.26 The council is acting on requests to improve the licence application and payment system. It will now be reviewed and adjustments or improvements made. In addition, we welcome ongoing feedback from customers on their experiences of the system so any future adjustments or improvements are made.

#### **Theme 11: Guidance needed on the proposed licensing scheme for housing landlords and tenants**

- 3.27 For the proposed scheme, presentation of HMO Standards and Conditions will improve. They will become more user friendly and presented online on the council's website. In addition, it should be noted that the Private Sector Housing Team staff (responsible for HMO licensing) are available to assist with any help, support or guidance with the proposed scheme.

#### **Exemptions from additional HMO licensing**

- 3.28 In addition, a significant theme from the stakeholder events was on exemptions from the proposed licensing scheme. The council recognises that in some circumstances there will be HMO properties exempt from the proposed scheme.
- 3.29 Schedule 14 of the Housing Act 2004 details buildings which are not HMOs for the purposes of that Act. For example, buildings controlled or managed by public sector bodies, buildings which are social housing and managed by or in the control of registered social landlords and buildings occupied by students (purpose built student halls of residents). But, only where occupied by persons undertaking a full-time course or further education at a specified educational establishment.

- 3.30 There is also provision under the Act 2004 to grant temporary exemptions from the proposed licensing scheme, normally for 3 months and a further 3 months if circumstances allow. For example, if a housing landlord has passed away and the property is marketed for sale.
- 3.31 The council would only offer an exemption from additional HMO licensing if the relevant building was not an HMO under the Act 2004. Exemptions would be considered on a case by case basis, at the licence application stage. In addition, where no exemption under the Act 2004 exists then the council would not exclude a particular type of property from the proposed licensing scheme. This includes properties let through charitable organisations. However, a licence fee application discount is being proposed for licence holders who are registered charities.

### Licence fees and discounts

- 3.32 Following the licence fee structures presented at the 20 September 2023 Housing Committee, the structures to apply for the proposed additional HMO licensing scheme are below in **Tables 1** and **2**. They also detail discounted licence fees for accredited landlords and Energy Performance Certificate ratings, weekly fee comparisons and prompted fees (for late applications).

**Table 1** – proposed Additional HMO Licensing Scheme fee for properties let on single tenancies with 3 or 4 occupants

Standard application fee	Standard weekly fee comparison	Prompted fee
£800	£3.08	£900
<b>Accredited/EPC rating C or above or a property's "potential" rating is met and has a rating of E or higher (£75 discount)</b>	<b>Accredited/EPC rating C or above or a property's "potential" rating is met and has a rating of E or higher – weekly fee comparison</b>	
£725	£2.79	

**Table 2** – proposed Additional HMO Licensing Scheme fee for properties let on multiple tenancies with 3 or 4 occupants

Standard application fee	Standard weekly fee comparison	Prompted fee
£1,020	£3.92	£1080
<b>Accredited/EPC rating C or above or a property's "potential" rating is met and has a rating of E or higher (£75 discount)</b>	<b>Accredited/EPC rating C or above or a property's "potential" rating is met and has a rating of E or higher – weekly fee comparison</b>	
£945	£3.63	

- 3.33 Following requests from Propertymark (a professional membership body for estate and letting agents) during the public consultation for discounted licence fees, it is proposed to add this organisation for eligible discounted fees. Therefore, a £75 discounted licence fee would be available for an estate or letting agent licence holder with associate membership of Propertymark.
- 3.34 The licence fees in **Tables 1 and 2** enable the council to achieve full cost recovery for the proposed scheme. In addition, the fees are not considered too onerous (less than £4 per week over the proposed 5 year scheme) and are fully tax deductible.
- 3.35 Further to themes identified on exemptions from the scheme, then it is proposed to offer a new discounted licence fee in **Table 3** below for housing organisations (charities) registered with the charity commission for England and Wales.

**Table 3** - proposed Additional HMO Licensing Scheme application fees with new discounts

<b>Housing organisations (charities)</b>	
<b>HMO properties let on single tenancies with 3 or 4 occupants</b>	<b>HMO properties let on multiple tenancies with 3 or 4 occupants</b>
For each property, applicants required to pay Part A £534 and Part B £191 for up to a 5-year licence (a total application fee of £725 which is £75 less than the standard application fee)	For each property, applicants required to pay Part A £680 and Part B £265 for up to a 5-year licence (a total application fee of £945 which is £75 less than the standard application fee)

### **HMO standards and conditions**

- 3.36 Through licensing, landlords have to meet appropriate and professional standards of conduct, demonstrate that their property meets health and safety standards including fire and electrical safety and that they exercise appropriate management of the building to help reduce any adverse impacts on the neighbourhoods. This licensing scheme will help to drive up standards in HMOs and ensure that properties are safe to occupy and standards and conditions will apply.
- 3.37 It is proposed the standards and conditions at Appendix 3 are set for the proposed additional HMO licensing scheme and the existing mandatory HMO licensing scheme. The council will inspect properties to ensure that they comply with licence conditions and monitor compliance with any works required. The scheme will be monitored and reviewed during its duration to ensure that it is operating effectively.
- 3.38 The proposed new licence conditions for 10 Fire Precautions and 11 Heating are included at Appendix 3.



#### **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 completed a full options appraisal on options for licensing in the city. The Committee agreed to proceed with the public consultation as outlined in paragraph 3.1 of this report.
- 4.2 This report shows the benefits and negative outcomes for introducing and not introducing respectively the proposed additional HMO licensing scheme, as outlined in paragraphs 3.3 and 3.4 of this report. In addition, there are risks (from benefits not arising) as outlined in paragraph 7.5. Therefore, it is recommended Housing Committee adopt the proposed licensing scheme.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 Extensive consultation has taken place on the proposed additional HMO licensing scheme, and in total 116 responses were received during the engagement. There were also 62 participants joining six stakeholder events. In addition, there were 5 separate written responses received.
- 5.2 Appendix 1: Consultation Findings' Report by CJ Associates and Appendix 2: Themes Arising from the Consultation and Responses both provide further analysis of responses. Approaches taken for the consultation were:
- Launch of the consultation promoted through the council's website and social media channels and full page adverts in Brightonian and Hovarian magazines.
  - London Property Licensing was used to promote the consultation who have a wide housing landlord audience outside of Brighton and Hove.
  - The council's website allowed respondents to have their say on the consultation by way of a questionnaire survey.
  - The same information online was distributed in consultation packs, with postage paid return envelopes for completed questionnaires, across all the city's libraries and other council locations.
  - Residents and businesses were consulted during the consultation and responses came from private rented tenants, social housing tenants, owner occupiers, landlords, letting and managing agents.
  - Property agents in the city with an interest in landlords located overseas were also consulted.
  - Further organisations were engaged such as landlord accreditation groups (ihowz Landlord Association, National Residential Landlords Association and Safeagent), East Sussex Fire and Rescue Service, Sussex Police, Universities (University of Brighton, University of Sussex, and British and Irish Modern Music Institute) and voluntary or community groups – those acting for private tenants.
  - The consultation was also promoted by the National Health Service - Primary Health Care news bulletins reaching General Practitioners' Practices and other Primary Care staff.
  - Just life foundation, acting for homelessness prevention, ran an article on the consultation in one of its community newsletters.

- More organisations, the National Energy Action, British Red Cross, Brighton & Hove Energy Services Co-operative, Brighton & Hove Food Partnership, Money Advice Plus and Southern Water – were also engaged.
- Use of machine-readable codes (QR codes) taking smart device users (phone or tablet users) direct to the online consultation were shared across the city.
- Posters with QR codes were displayed in the city’s libraries, selected leisure centres and the University of Brighton.
- Electronic posters with QR codes were located at Hove and Brighton town centre bus stops and flyers were also placed in a variety of locations across the city.

## 6. CONCLUSION

- 6.1 The consultation and evidence indicates that a new citywide additional HMO licensing scheme, as documented, is both an appropriate and proportionate response to issues identified. It is, therefore, recommended that there is a designation for this licensing scheme for 23 wards in the city as subject to additional licensing under s.56(1) of the Housing Act 2004 for HMOs of two or more storeys, occupied by three or four people excluding those properties which are HMOs by virtue of s.257 of that Act 2004. Such designation to apply from 1 July 2024 for a duration of 5 years.
- 6.2 In addition, agreement on the licensing fee structure and HMO licensing standards and conditions which apply to the additional HMO licensing and mandatory HMO licensing schemes is sought.

## 7. FINANCIAL & OTHER IMPLICATIONS:

### 7.1 Financial Implications:

The fees are set to recover costs and therefore this scheme is cost neutral to the council. The Additional HMO licensing scheme requires an average of 6 additional officers (full time equivalent) for each of the 5 years. The number of staff required will fluctuate over individual years, depending on the number of applications expected in each year and more resources may be required in the first year of the scheme when the majority of applications will be received. For 2024/25, staff, set up and running costs are estimated to be £390,000 for 8 full time equivalent staff (from July 2024). The service is aware that they need to align recruitment with the expected level of license applications to alleviate any cash flow problems or the risk of budget pressures arising over the life of the scheme.

A review of the cash flow for this scheme indicates that there will be sufficient income from licensing fees in each of the five years to pay for any staffing costs, set-up and mobilisation costs without leaving a shortfall in any year. Therefore, no up-front pump-priming budget will be required.

*Finance Officer Consulted: Monica Brooks*

*Date: 29/2/24*

## 7.2 Legal Implications:

The legal framework for the introduction of additional HMO licensing is set out in Part 2 of the Housing Act 2004. Designation of the 23 wards in the city cannot come into force unless the designation has been confirmed by the Secretary of State or falls within a general approval. The proposed designation falls within the 2015 General Approval. If a designation is made, section 59 of the Housing Act 2004 imposes a number of post designation notification requirements.

If the recommendation is approved to designate the 23 wards as subject to additional licensing for 5 years, there is a statutory requirement to keep the operation of the designation under review. The designation could therefore be revoked at any time in the 5 years.

*Lawyer Consulted: Liz Woodley Date: 28/02/2024*

## 7.3 Equalities Implications:

A full Equalities Impact Assessment has been completed for the proposed additional HMO licensing scheme which is attached in Appendix 4. No significant negative consequences relating to groups with protected characteristics were identified.

## 7.4 Sustainability Implications:

The evidence has identified issues with management and poor property conditions in the HMO private rented sector. Measures are proposed to improve the sector's quality and provide greater housing choices. This will support sustainability. Discounted licence fees for properties with an EPC rating C or above or where a property's "potential" rating is met and has a rating of E or higher will benefit energy efficiency. With further advantages for reduced energy bills, warmer and comfortable homes and reduced carbon footprints.

## 7.5 Any Other Significant Implications:

The introduction of the additional HMO licensing scheme seeks to benefit tenants, housing landlords, the community and reduce abrupt end of tenancies linked to homelessness in the city. If the scheme is not introduced there are notable negative outcomes for tenants, housing landlords, the community and homelessness. Essentially, there are risks of the benefits not arising.

## **SUPPORTING DOCUMENTATION**

### **Appendices**

Appendix 1 & 1a: Consultation Findings' Report by CJ Associates

Appendix 2: Themes Arising from the Consultation and Responses

Appendix 3: HMO Licensing Standards and Conditions

Appendix 4: Equalities Impact Assessment

**Documents in Members' Rooms:**

- Full consultation feedback and responses

**Background Documents:**

- Housing Act 2004
- Feasibility study by Cadence Innova, February 2023 on Selective and Additional Licensing Schemes
- Private rented sector: housing stock condition and stressors report by Meta Street Ltd, March 2023