

Title of meeting: Cabinet

Date of meeting: 22nd November 2022

Subject: Additional Licensing Scheme for Houses in Multiple Occupation in Portsmouth

Report by: James Hill - Director for Housing, Neighbourhoods and Building Services

Report Author: Clare Hardwick - Head of Private Sector Housing

Wards affected: All

Key decision: Yes

Full Council decision: No

1. Purpose of report

- 1.1 To summarise the findings of the recent consultation on the proposal to introduce Additional Licensing for Houses in Multiple Occupation (HMOs) across the city.
- 1.2. To outline the proposed additional licensing scheme in Portsmouth, having taken into account the consultation feedback, for Cabinet to decide if they wish to proceed with the formal introduction of such a scheme.
- 1.3. To present the updated Private Sector Housing Enforcement Policy, and Private Sector Housing Space and Amenity standards for HMOs, for Cabinet to decide on their adoption.

2. Recommendations

- 2.1. That the Cabinet have regard to all the responses to the statutory consultation and the evidence base previously presented to Cabinet on 22nd March 2022 together with the matters set out in this report and consider whether an additional licensing scheme for HMOs in the City should be introduced. If the Cabinet does not decide to proceed with the scheme, they should not approve recommendation 2.2 below but should still review recommendations 2.3 and 2.4 below
- 2.2. Subject to recommendation 2.1, That Cabinet approves:
 - 2.2.1 To designate the whole of the city as subject to additional licensing under section 56(1)(a) of the Housing Act 2004 in relation to every class of HMO, but only including

those section 257 HMOs that are mainly or wholly tenanted, including those with resident landlords.

- 2.2.1.1. That the designation set out in recommendation (2.2.1) above, shall come into force on 1st September 2023 for a period of 5 years.
- 2.2.1.2. That delegated authority be given to the Director for Housing, Neighbourhoods and Building Services to sign the 'Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2022' (as attached at Appendix 10) in accordance with the provisions set out in the Scheme of Delegations in the Council's Constitution.
- 2.2.2. The Licence Conditions contained in Appendix 7.
- 2.2.3. That Cabinet consider the options outlined in Appendix 5 for Licensing Model and Appendix 6 for Fee Structure and agree to proceed with either;
 - 2.2.3.1. **Option A:** Standard 5-year licence term issued to all licence applicants, with the exception of those where planning permission is required but not yet granted; where a 1 year licence would be issued to allow time for the planning process to be fulfilled. If Model A is preferred; cabinet approve the adoption of the proposed fees and charges structure (as attached at Appendix 6) outlined for Model A and instruct officers to bring a further report to Cabinet reviewing the fees before the commencement of the scheme, and annually throughout the scheme to ensure they remain reasonable and proportionate and address any issues relating to surpluses or deficits in accordance with case law and the EU Services Directive.

Or;
 - 2.2.3.2. **Option B:** a tiered structure for Licence terms based on the compliance and competence of the licence holder. This model would also include issuing 1-year licences where planning permission is required, as with Model A above. If Model B is preferred; cabinet approve the adoption of the proposed fees and charges structure (as attached at Appendix 6) outlined for Model B and instruct officers to bring a further report to Cabinet reviewing the fees before the commencement of the scheme, and annually throughout the scheme to ensure they remain reasonable and proportionate and address any issues relating to surpluses or deficits in accordance with case law and the EU Services Directive.
 - 2.2.3.2.1. That if Option B is preferred, Cabinet approves the Policy for Landlord Accreditation contained in Appendix 8, and agrees to cease operating an in-house landlord accreditation scheme in favour of working with local and national landlord and agent accreditation schemes.
 - 2.2.3.2.2. That if Option B is preferred; to instructs officers to present a further report to Cabinet before September 2023 with proposals to alter the Mandatory HMO Licensing model, fee structure and Licence

conditions to create consistency between Mandatory and Additional Licensing of HMOs.

- 2.3. That Cabinet approve the updated Private Sector Housing Enforcement Policy contained in Appendix 3, and agree its implementation from 1st December 2022.
- 2.4. That Cabinet approve the updated Private Sector Housing HMO Space and Amenity standards document contained in Appendix 4, and agree its implementation from 1st December 2022.

3. Background

- 3.1. On 22nd March 2022 Cabinet considered a report titled "Examine the need for Additional Licensing controls of HMOs in the City". This report was produced as an action identified in the Portsmouth City Council Private Rental Sector Strategy 2021-2026. The report outlined the evidential base for the potential introduction of an additional Licensing scheme for HMOs in the city, in order to protect private rental tenants of HMOs from poorly managed and maintained properties.
- 3.2. The data in this report suggests a higher proportion of hazards are likely to exist in HMOs in the city compared with other PRS properties. Currently only 20% of the estimated number of HMOs in the city are licensed. Given the economics of scale, significant hazards are likely to be identified in a significantly high proportion of the other 80% of HMOs in the city not currently licensed, particularly as a large majority of these non-licensed HMOs will have had no inspection by the council before.
- 3.3. Section 56 of the Housing Act 2004 places requirements on Local Authorities when considering a designation for Additional Licensing of HMOs in that the Council must:
 - Consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or likely to give rise, to one or more problems whether for those occupying the HMOs or for members of the public;
 - Take reasonable steps to consult with persons who are likely to be affected and consider any representations made in accordance with the consultation; and
 - Have regard to any information regarding the extent to which any codes of practice approved under Section 233 have been complied with by persons managing HMOs in the area (these codes relate to University managed accommodation).
- 3.4. Section 57 provides further considerations for the Council, in that they should ensure that:
 - Exercising the designation is consistent with the authority's overall housing strategy;



- Seek to adopt a coordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour (ASB) affecting the Private Rented Sector (PRS) as regards combining licensing with other action taken by them or others;
Consider whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problems or problems in question; and
That making a scheme will significantly assist them to deal with the problem or problems (whether they take any other course of action as well).

3.5. Government guidance provides examples of properties being managed “sufficiently ineffectively” including:

- Those whose external condition and curtilage (including yards and gardens) adversely impact upon the general character and amenity of the area in which they are located;
- Those whose internal condition, such as poor amenities, overcrowding etc. adversely impact upon the health, safety and welfare of the occupiers and the landlords of these properties are failing to take appropriate steps to address the issues;
- Those where there is a significant and persistent problem of anti-social behaviour affecting other residents and/or the local community and the landlords of the HMOs are not taking reasonable and lawful steps to eliminate or reduce the problems; and
- Those where the lack of management or poor management skills or practices are otherwise adversely impacting upon the welfare, health and safety of resident and/or impacting upon the wider community.

3.6 The council have considered the matters set out in paragraphs 3.3 and 3.4 above, which is detailed in the consultation document contained in Appendix 12.

4. Consultation

4.1. On the 22nd March 2022, Cabinet considered a report titled "Examine the need for Additional Licensing controls of HMOs in the City". The approved recommendations authorised the undertaking of a statutory citywide consultation to explore the option of an Additional Licensing Scheme. The Council undertook a statutory ten-week consultation process from 23rd May 2022 to 2nd August 2022. The consultation was originally due to close on 31st July 2022 but was extended by 48 hours due to a technical fault with the Councils website on 20th July 2022 which meant that the consultation was not accessible for a period of less than 12 hours. The full summary report of the consultation is contained in Appendix 1, and all written responses to the consultation contained in Appendix 2.

4.2. Throughout the period of engagement, officers worked jointly with the Communications team to ensure that a comprehensive communications strategy was delivered. A consultation plan was developed which incorporated a range of methods for engagement and conducting the consultation, including;



- Online questionnaires;
- Drop in sessions;
- Door knocking in key areas of the city;
- Use of digital promotion such as officer email signatures, and website banners
- Social media and press releases;
- Posters and Flyers in public spaces around the city; and
- Use of the Councils Flagship magazine which is circulated to all residents of the city.

- 4.2.1. The following provides a precis of the results which are provided in full in Appendix 2.
- 4.2.2. The Consultation survey received responses from 1050 respondents. 42% of respondents are local residents neighbouring a HMO, 11% are tenants in a non-licensed HMO, 13% are tenants of already licensed HMOs, and 10% are HMO landlords.
- 4.2.3. Overall, the majority of respondents agree with the proposal to introduce additional licensing across the whole city (69%), whilst a fifth of respondents strongly disagree. There were a variety of responses received, with residents and private tenants generally being more supportive of additional licensing than landlords. The responses received to the consultation questions identifies a clear difference of opinion between residents and those who own or manage houses in multiple occupation.
- 4.2.4. The majority of respondents agree or strongly agree that licensing will help to achieve the aim of protecting private rented tenants of HMOs from poorly managed and maintained properties (69%).
- 4.2.5. 72% of respondents agree that licensing will:
- Enable council officers to utilise enforcement powers to drive up housing standards, housing management and tenant wellbeing.
 - Help to drive up housing standards in properties where there is poor management, need for repairs, amenity and safety issues
 - Help to effectively regulate HMO standards through identifying an individual responsible for management of the property
- 4.2.6. 71% of respondents agree that licensing will help to achieve the aim of supporting good landlords and make it easier to identify and enforce against rogue landlords
- 4.2.7. Half of the total respondents agree with the proposed fee structure (51%), whilst 17% neither agree nor disagree, and 31% disagree.
- 4.2.8. The majority of respondents strongly agree with the standards set out by the potential license conditions (59%), and a further 14% slightly agree. 10% of



respondents neither agree nor disagree with the potential license conditions and 18% slightly or strongly disagree.

- 4.2.9. Of the respondents who disagree with the proposal to introduce additional licensing across the whole city 84% would not like the scheme introduced in any areas of the city, whilst 16% would like the scheme introduced in fewer areas of the city.
- 4.2.10. Cabinet must carefully consider the full results of the consultation, and it should be noted that although there was strong support for the scheme overall, the vast majority of landlords were opposed to designation for the reasons as recorded in the report. Cabinet is required to have regard to all of the responses to the consultation in considering this report, and the recommendations now made.
- 4.2.11. Cabinet should also note that a number of respondents, predominantly from local residents living near to HMOs, gave responses that indicated they believe HMO licensing can achieve outcomes which are beyond the remit of the scheme, such as restricting the number or locations of HMOs in the city, or addressing specific impacts of living near to HMOs such as issues with parking or noise.

5. Licensing Model

- 5.1. As can be seen from the consultation there was high support generally to introduce Additional Licensing, however there were a number of concerns raised, particularly by landlords. One of the main concerns raised by landlord respondents to the consultation, including the local landlord association, was that 'good' landlords would be penalised by the scheme, while 'bad' landlords are not differentiated, and may manage to evade licensing all together. They expressed concerns that well performing landlords would in effect be funding a scheme through licensing fees that would resource dealing with poorly performing landlords. They felt this scheme does not recognise that there are a significant number of well performing HMO landlords operating in the city who should be differentiated from those that a not performing as they should.
- 5.2. Feedback from the National Residential Landlords Association (NRLA) however suggests that all Landlords and Agents should be treated the same; that they should all receive regular licence inspections which they advocate is a means by which to support landlords and agents, identify and act upon poor practice, and support and encourage good practice.
- 5.3. To address this difference in opinion, two different licensing models are detailed in appendix 5, for Cabinet to consider. They can be summarised as follows:
 - 5.3.1 **Option A is in line with the current Mandatory Licensing Model**, and was detailed in the proposal set out in the recent consultation. This involves issuing 5-year licences to all licence applicants, all licensed HMOs would be inspected at least once during their licence term. The exception to this would be where

planning permission is required but not yet granted; where a 1-year licence would be issued to allow time for the planning process to be fulfilled.

- 5.3.2 **Option B introduces an alternative tiered approach to licence periods**, whereby well performing landlords are recognised with longer licence terms, and poor performing landlords kept under close review with short licence terms. In accordance with Section 68 of the Housing Act 2004 the maximum period a licence can be issued for is 5 years, however local authorities have discretion to issue licences for shorter periods if they are satisfied that in the circumstance of the particular property a shorter period is appropriate. Oxford City Council and Coventry City Council run additional licensing schemes which follow a similar licensing model.
- 5.3.2.1. Should Option B be preferred, the scheme will require all owners of HMOs that are occupied by three or four tenants and all converted self-contained flats that are wholly tenanted to apply to the Council for an HMO licence. Once a valid application is received the Council will determine which type of licence is appropriate using the criteria outlined in Appendix 5. This will include, amongst other things, an assessment of the landlord and manager's ability to comply with the licensing requirements and management practices. Licences will be issued for a period of 1 year, 2.5 years, or 5 years based upon the eligibility of the landlord or agent.
- 5.3.2.2. The Council has considered the learning outcomes from other Local Authorities that have introduced similar schemes and has structured the scheme in such a way that benefits those landlords and agents that are compliant and provides incentives to improve compliance, whilst focusing resources and support to the non-compliant landlords through shorter licences. This is reflected in the fees and charges structure and the eligibility for licences, which sees well performing landlords issued lower cost licences for the maximum 5 year licence term. The Council would inspect each licenced property at least once during the licence term, therefore a well performing landlord issued with a 5 year licence can typically expect an inspection once over that period, whereas a landlord issued with an annual licence because there are concerns identified with their management or compliance will receive an annual inspection, and will consequently pay more for their licence to cover the additional costs of council resources in doing so. This is in line with the Council's Private Rental Sector Strategy 2021-26 which seeks to encourage good landlord practice, and take decisive action to address poorly performing landlords.
- 5.3.2.3. Accreditation of Landlords and Agents will be used as a way to distinguish those landlords and agents who are experienced, knowledgeable in their profession and are committed to following good industry practice. Portsmouth City Council has been running a Landlord accreditation scheme since 2010, which was rebranded in 2018 to "Rent it Right". It was well advertised and free to join, as well as offering many benefits to members such as free support and advice, and discounts. However, take up from landlords has been limited, as of May 2021 there were 277 accredited landlords registered with the Rent it Right scheme, out of an estimated



11,000 landlords operating in Portsmouth. Officers recommend that the Council ceases to operate an in-house landlord accreditation scheme, and instead recognise that local and national schemes administered by other organisations that meet the criteria outlined in Appendix 8, provide good support and education for their accredited members and promote best practice in the industry, and should therefore be promoted and encouraged by the Council for the benefit of Landlords, Agents and Tenants. Such accrediting bodies include the National Residential Landlord Association (NRLA) and the Association of Residential Letting Agents (ARLA). Any differentiation applied to landlords and agents based on the eligibility criteria, including the length of licence for which they may be considered, is justified in furtherance of the overriding public interest of improving the standard of HMOs and their management.

- 5.4. Feedback through the consultation from several respondents, most notably the National Residential Landlords Association (NRLA) and the Local Landlords Association, the Portsmouth and District Private Landlords Association (PDPLA), suggested that more should be done through the licensing scheme to promote and encourage good energy efficiency of properties. Therefore, criteria for receiving a 5-year licence also includes the requirement to have an EPC certificate with a minimum "E" Rating, or a valid registered exemption, even where the HMO does not legally require an EPC at present. This is further incorporated into the licence conditions, outlined in Section 7 below, and detailed in appendix 7, that all licence holders must submit on request a valid EPC if legally required for the property, demonstrating that it meets a minimum "E" Rating, or has a valid registered exemption.
- 5.5. Reactive and proactive services will be carried out to address complaints about property conditions, poor management practices and identifying unlicensed properties, with officers investigating and holding to account any landlords or agents evading the licensing scheme.

6. Financial appraisal of an additional licencing scheme

- 6.1. Any HMO licensing scheme, including a designation of additional licensing, requires a fee payable by the licence holder to cover the city council's costs for operating the scheme. This fee will take into account all costs incurred by the authority in carrying out their functions, as outlined in The Housing Act 2004.
- 6.2. Should the recommendations in this report be approved, the indicative licence fee structure is contained within Appendix 6 and is summarised within this report. The fee structure should be reviewed before the commencement of the scheme; to take into account a number of variable factors which could affect the scheme being cost neutral for the local authority, between now and September 2023. Examples include changes to the national rate of inflation, changes to staffing costs, or further information on the number of HMOs in the city. For this reason the fee structure should also be subject to regular review throughout the scheme.



- 6.3. It should be noted that a number of respondents to the consultation, specifically from Private tenants and Landlords, raised concerns about the licensing costs, stating that they are too high, or that there is a risks the costs could be passed on to tenants by their landlords through increased rents.
- 6.4. When setting the fees and charges structure for the licensing scheme the Council must consider the costs incurred in adequately resourcing and administering such a scheme, including staff costs for administration, inspections and enforcement, training, and publicity and other costs such as office requirements and management support. As detailed in Section 5 of this report, there are two options for licensing models for Cabinet to consider, and therefore two separate fee structures to reflect the resources required to administer the separate models.
- 6.5. The fee structure for Option A has been developed to reflect all licences being issued for a 5-year term, with the exception of those where planning permission is required but not yet granted; where a 1-year licence would be issued to allow time for the planning process to be fulfilled. The fee structure is designed to ensure sufficient resourcing so that the scheme can be delivered effectively, and every property can be inspected at least once during the licence term.
- 6.5.1. The proposed licence fee for Option A would be £926 for a 5-year licence (£15.43 per month) which would be issued to all licence holders, with the exception of those where the property requires planning permission for its use as a HMO in which case it would be issued with a 1 year licence.
- 6.5.2. Based on estimated numbers of HMOs across the city, to deliver the licensing model A detailed in appendix 5 the city council will be required to employ more staff resource. Estimated requirements based on a city-wide designation indicate that an additional 18.5 FTE will be required to deliver the scheme in year one, reducing to 11.5 FTE in years two to five.
- 6.6. The fee structure for Option B has been developed to provide incentives for compliant landlords whilst providing sufficient resources to ensure that the scheme can be delivered effectively, and every property can be inspected at least once during the licence term.
- 6.6.1. The proposed licence fee for Option B would range from £1,035 for a 1-year licence, £772 for a 2.5 year licence, and £746 for a 5 year licence (£12.43 per month), depending on the applicant meeting the criteria for the different terms of licences (detailed in Appendix 5).
- 6.6.2. Based on estimated numbers of HMOs across the city, to deliver the licensing model B detailed in appendix 5 the city council will be required to employ more staff resource. Estimated requirements based on a city-wide designation, with a tiered system of licence terms based on the eligibility of the applicant, indicates that as many as 40FTE additional officers will be required to deliver the scheme. The licensing model is complex, and the resources required to properly administer it depends on the number of licences issued for each category of licence term.



Most notably each property will be inspected at least once during their licence term, so licences issued for 1 year where concerns have been identified with their management or compliance will require an annual inspection, whereas licenses issued to complaint applicants for 2.5 years will be inspected at least twice during the 5-year scheme, and well performing landlords issued with a 5 year licence will require an inspection only once during the 5 year period of the scheme. The Council has no way of accurately identifying how many licences will be issued for each category of licence term in advance, and therefore the exact resources required to administer it. Officers propose to resource initially on the basis of processing all licence applications, and to have adequate staff to inspect the estimated number of 1-year licences issued during their initial licence term. Once the scheme is operational, further recruitment will be conducted to resource against the demand for inspections for all licences issued. This is likely to cause an initial delay in inspecting licenced properties issued with a 2.5 year or 5-year licence which may not be inspected until year 2 or 3 of the scheme respectively.

- 6.7. Due to the volume of applications anticipated, officers estimate a period of 52 weeks will be required to process all of the licences received. This will include the processing of applications, issuing draft and full licenses as required by the legislation, and completing verification checks on those properties with licence holders unknown to the council or where additional checks are needed to assess the suitability of a property to operate as a HMO.
- 6.8. If a designation is made, recruitment of staff would be focused on adequately resourcing for anticipated demand at the start of the scheme. The resources required would differ depending on the licensing model that cabinet choose to proceed with, as detailed in paragraph 6.5.2 and 6.6.2 above. However, in either scenario the majority of staff will need to be recruited approximately 3 months prior to the commencement of the scheme to allow adequate time for induction and training as necessary. Recruitment of some core roles will be required sooner than this, such as management roles and some administrative support, to work on the mobilisation of the scheme.
- 6.9. If a designation is made, HMOs will be able to continue to operate without recourse if a valid application has been submitted to the council. In addition, the city council's existing refunds policy regarding HMO applications will apply, should a designation of additional licensing be made.
- 6.10. It should be noted that there is a financial risk of not knowing the exact number of HMOs in the city, and the cost modelling is based on the estimated number of HMOs in the city-wide designation area. If the number of HMOs transpires to be significantly different than the estimated number, the city council may not recover these costs through the licensing fees.

7 Licence Conditions

- 7.1. Should the recommendations in this report be approved, the licence conditions which will be applied as standard to all licences issued through the Additional

Licensing Scheme are contained within Appendix 7 and summarised within this report.

- 7.2. A licence holder will be required to adhere with these conditions when operating a licensable HMO. The purpose of these conditions is to ensure the suitable management and health and safety of the HMO is in place.
- 7.3. The city council, through its private sector housing team, will administrate each licence application and may include additional "special conditions" on a license based on the management or property requirements. These could be, for example, a condition that requests additional facilities or amenities be provided within the HMO, such as an additional toilet or cooking facilities.
- 7.4. The licence holder may contest any licence conditions applied by the city council within 21 days of the draft licence being provided, the council will then give consideration to these representations and respond to the licence holder.
- 7.5. Respondents to the Consultation provided a number of suggestions regarding the proposed Licence conditions. Some of which are beyond the scope of additional licensing, such as to limit the number or location of HMOs in the City, or to restrict car ownership for HMO residents.
- 7.6. Licences must include all mandatory conditions required in accordance with the legislation, for example, providing gas and electrical certificates and maintaining health and safety standards. However, the local authority can also include discretionary licence conditions, which will be an important tool in ensuring that the aims and objectives of the scheme are achieved. When considering discretionary conditions regard must be had for the enforceability of such conditions, and that failure to comply with licence conditions is a potentially prosecutable offence for the licence holder. They must therefore be reasonable, and serve to achieve the aims and objectives of the scheme.
- 7.7. In response to the consultation feedback, several additional conditions will be included in licences issued through the additional licensing scheme. All licence conditions are detailed in Appendix 7, including the following as a direct result of the consultation:
 - More detail regarding the requirements for waste management
 - Reference requests for prospective tenants
 - Provision of rent receipts (where rent is paid in cash)
 - Supply of EPC certificates where required to demonstrate compliance with Minimum Energy Efficiency standards
 - Have arrangements in place for tenants to report emergencies where the licence holder is out of the country for over one month
 - Provide contact details for neighbouring property owners in case of emergencies
 - Written procedure for dealing with complaints of nuisance, noise or antisocial behaviour.



8 Space and Amenity Standards

- 8.1. The updated Private Sector Housing space and amenity standards for HMOs is contained within Appendix 4 and summarised within this report.
- 8.2. Alongside consulting on the Additional Licensing Scheme, the Council consulted on an updated version of the Private Sector Housing space and amenity standards document for Houses in Multiple Occupation. The updated standards document aims to simplify the existing space and amenity standards document and provide information which was previously not included, such as information regarding bedsit HMOs. The main respondent to this consultation were the local landlords' associations, the Portsmouth and District Private Landlords Association (PDPLA).
- 8.2. The city council's space and amenity standards aim to:
 - 8.2.1. Provide guidance on some of the requirements for privately rented Houses in Multiple Occupation.
 - 8.2.2. Give information on the requirements for functional space, available amenities such as kitchens and bathrooms and other design matters such as lighting and ventilation.
 - 8.2.3. Where these requirements vary for different types of accommodation, guidance has been provided based on dwelling type.
 - 8.2.4. The guidance aims to provide an overview of standards and legislation applicable to certain types of accommodation to assist landlords, property managers and other stakeholders.
 - 8.2.5. This guidance will also provide tenants with information regarding adequate space and amenity standards in their home.
- 8.3. The PDPLA made requests for the document to be improved in terms of the layout and visual appearance, particularly with the aim of making the document more accessible and easier to navigate. The final document shown in Appendix 4 has therefore been improved through the Councils in-house design team.
- 8.4. The PDPLA also raised a number of concerns about the requirements outlined in the space and amenity standards document, with an emphasis on their potential impact on existing HMOs in the city, and the potential reduction in supply of existing HMOs for local residents. The final document therefore shows the space and amenity standards required for HMOs, but also outlines a maximum level of tolerance that officers will apply when assessing existing, unchanged HMOs in the city. This is also in line with previous judgements made by the First Tier Property Tribunal in relation to the space and amenities required. This outlines a clear distinction for New HMOs, for increase of occupancy to existing HMOs, or where an application for planning permission is made in relation to the use or

physical enlargement of an HMO, where no departure from the minimum standards will be applied.

9 Private Sector Housing Enforcement Policy

9.1. The updated Private Sector Housing Enforcement Policy 2022 is contained within Appendix 3 and summarised within this report.

9.2. At the same time as consulting on the Additional Licensing Scheme, the Council consulted on an updated version of the Private Sector Housing Enforcement Policy.

9.3. The proposed updated private sector housing enforcement policy aims to make the following changes to the existing policy:

- Clarify in more detail the types of enforcement action that may be used under the Housing Act 2004, and when the council will exercise enforcement action under this act.
- Introduction of a new financial penalty matrix - The updated policy outlines the framework for establishing instances where a financial penalty will be considered, as well as the amount of financial penalty, and any mitigating factors that may reduce the level of penalty. The value of civil penalties is based on guidance and legislation and is increased dependant on the nature of the offence, culpability of the offender, and the resulting harm.
- Inclusion of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, which came into force on June 2020.

9.4. The main respondent to this consultation were the local landlords' associations, the Portsmouth and District Private Landlords Association (PDPLA).

9.5. The PDPLA made requests for changes to the layout of the document, as well as requests for rephrasing, clarification, or further information to be included on a number of the sections within the written policy. The document has been amended where appropriate to accommodate these requests, and is contained in Appendix 3.

10. Timetable for implementation

10.1. Should the recommendations be approved the Council has general approval to designate the scheme under the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015 to implement an Additional Licensing scheme. Section 58 of the Housing Act 2004 states that a designation cannot come into force until three months after the date when the designation was made.

10.2. The timescale for implementing this decision however is recommended to commence on the 1st September 2023. This would allow officers reasonable time



to recruit and train the required staff to run the scheme, and would allow sufficient time for any legal challenge that may arise, as outlined in section 11.1. below.

11. Risks

- 11.1. A legal challenge to the decision to introduce additional licensing may occur because the majority of landlords are against the scheme. Officer opinion is that a defensible case has been made for additional licensing and the decision to introduce the designation. However, legal challenge is a high risk.
- 11.2. That insufficient income is received to cover the costs of the scheme due to an over estimation of the number of HMOs in the city or the reluctance of landlords to licence their properties. The data on the number of HMOs in the city is not exact. Staff resource will be required to seek out unlicensed properties and actively enforce the licensing requirements. A flexible approach to resourcing the scheme would help to mitigate this risk, along with regular review of the licensing fee structure.
- 11.3. That there has been an underestimation in the numbers of HMOs in the city and that the licensing service is unable to cope with higher than expected volumes of applications. A flexible approach to resourcing the scheme will help mitigate against this risk.
- 11.4. There is a risk that public expectations may become too high and create a belief that the scheme will solve every problem related to HMOs. This could result in disappointment with the scheme and the perception may well be that it has failed even if it delivers everything that was planned. A communications plan will be important to ensure a clear message is delivered regarding what the scheme aims to deliver.
- 11.5. There is a risk that recruitment of staff with the required skills to undertake the licensing activities, including the key aspect of enforcement of the scheme, is unsuccessful or takes a long period of time. Recruitment will focus on attracting experienced officers to key roles, with comprehensive training provided to less experienced staff.
- 11.6. There is a risk that if the scheme does not proceed, or a designation is made but later revoked as the result of legal challenge, the Council will have incurred costs that will not be recoverable. This includes the costs incurred to date for consultation and preparation of the final scheme for decision, at an estimated cost of £50,000, and if a designation is made but later revoked the costs for initial mobilisation for the scheme, initial recruitment, and publicity for the designation, including statutory public notices would incur an estimated cost of £50,000 in addition to any legal costs incurred in defending the decision to designate.

12. Integrated impact assessment

- 12.1. See Appendix 9

13. Legal implications

- 13.1 Part 2 of the Housing Act 2004 ("the Act") provides a mandatory licensing scheme for certain properties defined in that Act as HMOs. Section 56 of the Act provides a Local Housing Authority with a power to extend that scheme to certain types of HMOs outside the mandatory scheme by designating the whole or any parts of its area as being subject to Additional Licensing.
- 13.2 For the Council to designate an Additional Licensing Scheme it must proceed through the statutory process as laid out in Sections 56 and 57 of the Act. In addition, the Communities and Local Government issued guidance in draft form in 2010 under the Housing Act 2004: A guide to the licensing and management provisions in Parts 2, 3 and 4 of the Housing Act 2004. Whilst this guidance has since been archived, it has not been replaced with new guidance and it is helpful to therefore consider the guidance as part of the council's assessment of the effectiveness of HMO management practices in the PRS (referred to in paragraph 3.5 above).
- 13.3 Under section 56(1) of the Act and the General Approval issued in 2015 by the Secretary of State - the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015, provided the council consults for at least 10 weeks, then the council has the power to designate areas of additional licensing of HMOs without the need for specific approval from the Secretary of State.
- 13.4 The Act requires the local housing authority to take reasonable steps to consult persons who are likely to be affected by the designation. A statutory consultation must have been undertaken with landlords, letting agents, tenants, residents and other stakeholders in accordance with s.56(3) of the HA 2004. The Council must take into account the representations made as a result of the consultation before any decision is made on whether to designate the area. The principles of an effective and fair consultation require that the consultation takes place at a time when proposals are still at a formative stage; that the proposer gives accurate and sufficient reasons for any proposal to permit intelligent consideration and meaningful response; that adequate time is given for consideration and response; and that responses of consultation must be considered with a receptive mind and conscientiously taken into account in finalising any statutory proposals.
- 13.5 Before making a designation, the Council must consider the matters set out in section 56 - see para 3.3 of this report and section 57 - see para 3.4 of this report. These are explored in more detail in the consultation document provided with this report.
- 13.6 Section 149 of the Equality Act 2010 sets out the public sector equality duty in relation to all the protected characteristics (race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, marriage or civil partnership



and gender reassignment). The duty requires public authorities to have due regard to the need to :

- Eliminate unlawful discrimination, harassment and victimisation
- Advance equality of opportunity and
- Foster good relations between those who share a protected characteristic and those who do not.

The Equality Duty must be complied with before and at the time that a particular policy is under consideration or a decision is taken - i.e in the development of policy options and in making a final decision. An Integrated Impact Assessment is made available to the decision maker with this report.

13.7 The Council as a public body is under a duty to consider whether the exercise of its powers interacts with rights protected by the European Convention, set out in the Human Rights Act 1998. In this matter, the Convention rights applicable are:

- Article 1, Part 1 - the right of a person to the peaceful enjoyment of possessions. No one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law.
- Article 8 - the right of the individual to respect for their private and family life, their home and their correspondence. There should be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of, amongst other matters, public safety, the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or for the protection of the rights and freedoms of others.

Any interference with a Convention right must be necessary and proportionate and the council must consider carefully the balance to be struck between individual rights and the wider public interest.

13.8 Should the decision be made to introduce the scheme, section 58 of the Act states that a designation cannot come into force until 3 months after the date when the designation was made.

13.9 Section 59 and The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 set out the method by which any designation must be advertised and the people to be informed. These require that within 7 days of the decision, Public Notices of the designation will be:

- displayed on a public notice board in the Civic Offices
- published the notice on the Councils Website, and
- published in two separate local newspapers in their next edition, and five times in the editions of these newspapers with an interval between each publication being no less than two weeks and no more than three weeks.



- 13.10 Section 63 of the Act sets out the Council's powers to fix a fee. Any fee set must be fair, transparent and reflect the costs incurred by the Council in carrying out its functions. The fees cannot be used to raise extra revenue for other purposes.
- 13.11 Additional Licensing Schemes must not last longer than 5 years. During this time the council must review the operation of the scheme.
- 13.12 The proposed Private Sector Housing Enforcement Policy being considered in this report provides an opportunity for the Council to reflect changes in legislation since the policy was last reviewed and ensure its processes and procedures are fair and transparent. The updated policy takes into account the statutory guidance "Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities" updated April 2018.
- 13.13 There are prescribed standards that must be met in licensable HMOs for deciding the suitability of occupation of an HMO for a particular maximum number of households or persons. The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 and the Licensing and Management of Houses in Multiple Occupation and other Houses (Additional Provisions) (England) Regulations 2007 set out these standards. In addition, the Licensing of Houses in Multiple Occupation (Mandatory conditions of Licences) (England) Regulations 2018 specify mandatory conditions that must be included in all HMO licences. In addition, the Housing Act 2004 allows the local housing authority to determine a higher standard of amenities in houses in multiple occupation than those minimum prescribed standards.
- 13.14 It is within the Cabinet's powers to make the recommendations set out within this report, in accordance with the Council's constitution.

14. Director of Finance's comments

- 14.1 The charging mechanism for any proposed Additional Licencing scheme is designed to be cost neutral for the local authority. This requires accuracy to ensure that the costs of running the scheme are recovered through the fees charged, whilst also ensuring that no surpluses are made once the Costs of administering the scheme have been taken into account.
- 14.2 As the report states the number of HMO's in operation within Portsmouth are as yet unknown. As this picture becomes clearer the service will resource the service appropriately. The Additional Licencing charges work on the basis that we have a certain level of expenditure divided by a number and type of licences. This can at this stage only be estimated. The consequence of this is that the Licence fee income may not be adequate to cover the costs, resulting in budget pressures. If cabinet decide to proceed with an additional licensing scheme, a review of the fee structure should be undertaken again before the start of the scheme. Fees should also be reviewed periodically throughout the scheme.

14.3 If the charging mechanism made a surplus any surpluses would be remitted to a ring-fenced reserve and the Council would need to demonstrate that over a 5 year period that the scheme breaks even.

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Signed by: James Hill, Director of Housing, Neighbourhood and Building Services

Appendices:

- Appendix 1 - Additional Licensing Consultation summary report 2022
- Appendix 2 - Written responses to the Additional Licensing Consultation 2022
- Appendix 3 - Private Sector Housing Enforcement Policy 2022
- Appendix 4 - Private Sector Housing Houses in Multiple Occupation Space and Amenity Standards 2022
- Appendix 5 - Proposals for Additional Licensing models 2022
- Appendix 6 - Additional Licensing Fee Structure 2022
- Appendix 7 - Licence Conditions for Houses in Multiple Occupation 2022
- Appendix 8 - Policy for Landlord & Agent Accreditation 2022
- Appendix 9 - Integrated Impact Assessment (IIA)
- Appendix 10 - Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2022
- Appendix 11 - Public Notice of Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2022
- Appendix 12 - Additional Licensing scheme for consultation document

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Housing Act 2004	Housing Act 2004 (legislation.gov.uk)
Cabinet report (title) March 2022	Additional Licensing of HMOs.pdf (portsmouth.gov.uk)
PRS Strategy 2021 - 2026	Private Rental Sector Strategy for Portsmouth 2021- 2026
Additional Licensing consultation information	Additional-Licensing-Scheme-for-consultation-accessible-.pdf (portsmouth.gov.uk)

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: