

# ARUN DISTRICT COUNCIL

## REPORT TO AND DECISION OF ENVIRONMENT COMMITTEE ON 14 JULY 2022

**SUBJECT: Options for introducing further controls on the quality of Houses in Multiple Occupation**

**REPORT AUTHOR: Louise Crane Principal Environmental Health Officer**  
**DATE: 27 April 2022**  
**EXTN: 01903 737669**  
**AREA: PLACE**

### **EXECUTIVE SUMMARY:**

At the Housing and Customer Services Working Group meeting on 5 November 2020 Members recommended to Cabinet to continue to research and gather further evidence to help establish whether additional House in Multiple Occupation (HMO) licensing or selective licensing of the private rented sector was justified.

This decision was approved by Cabinet on 14 December 2020 and officers instigated the process of procuring the services of a company to undertake the required additional research and provision of a supporting report.

This report provides a summary of the findings from the research undertaken and sets out recommendations for additional controls that could be implemented to manage the quality of houses in multiple occupation.

### **RECOMMENDATIONS:**

That Committee:

1. Agree to instigating the consultation process subject to funding being approved for a proposed additional licensing scheme for houses in multiple occupation for the wards Marine, Hotham and River, to cover privately rented properties occupied by three or four people making up two or more households and properties converted into self-contained flats that meet the definition of Section 257 HMOs at a cost of £40,000.
2. Recommend a supplementary estimate of up to £40,000 to Policy and Finance Committee and Full Council for additional resources to support the consultation process required to implement the additional licensing scheme for houses in multiple occupation. This is a Band D Council Tax equivalent of 63p.

### **1. BACKGROUND:**

1.1 Mandatory licensing of HMOs came into force in 2006 and originally applied to properties of three storeys or more with five or more people making up two or more

separate households living in them. Landlords of these properties are required to apply to the council for a licence, pay a locally set fee to cover the cost of administering the regime and the property must meet minimum standards which include, room sizes, provision of amenities (bathroom and kitchens), gas, electrical and fire safety for example and the landlord must be a fit and proper to hold the licence.

- 1.2 Upon receipt of a complete application an inspection will be carried out to ensure the required minimum standards are being met. Where works are identified these will be included as part of the conditions of the licence and the landlord will be given timescales for their completion. The council determines if a landlord is fit and proper by means of self certification on the application form and the proposed licence holder declares that they have no unspent convictions or have any civil or criminal judgements against them in relation to housing, tenancy or public health related matters.
- 1.3 Before issuing a license, the local authority must legally send a draft copy of the licence to all interested parties for example, owner, leaseholder, mortgage company, agent etc providing a consultation period of 14 days and any representations must be considered by the council. After this period the licence can be issued and any conditions will be monitored to ensure they are completed and fulfilled, therefore follow up inspections will be carried out by officers. Licences are issued for a maximum period of 5 years, if the property meets all the required minimum standards then a further inspection will not be undertaken until renewal of the licence, unless a complaint is received that requires investigation. Under this scheme the council had 90 licensed HMOs.
- 1.4 With the rise in house prices many people are unable to afford their own home and therefore there has been an increase in the private rented sector over the last decade which in turn has seen an expansion of the HMO market and in it is now not uncommon for flats, and single and two storey houses, originally designed for families to be let as HMOs. Many are managed to a good standard by reputable landlords, but unfortunately this is not always the case. The government therefore introduced The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 on 1<sup>st</sup> October 2018 which removed the storey requirement as part of the definition for those properties required to be licensed under the mandatory scheme
- 1.5 The aim was to remove the uncertainty particularly in high risk, intensely occupied HMOs, by creating a level playing field between landlords so rogue landlords cease to be able to operate substandard accommodation for maximum profit. This resulted in any property with five or more people making up two or more separate households requiring a licence. Officers believe that under the new definition there are approximately 300 licensable HMOs within the district, i.e. that an additional 200 HMOs fall within the licensing regime due to this change. This figure has been supported by the recent private sector housing stock modelling undertaken by the Building Research Establishment (BRE). The Council currently has 206 licences either granted or in progress. It is therefore expected that there are still a significant number of HMOs which remain unlicensed and it will require proactive action and potentially enforcement by officers to ensure these properties have the required licence.
- 1.6 HMO licensing is the only proactive private sector housing standards compliance work undertaken by the Private Sector Housing and Public Health Team. The

regulation of the sector is restricted to investigating complaints received by the Council and officers working in a reactive way, rather than a planned and managed format. Enforcement is through the Housing Health and Safety Rating System (HHSRS). This is complex and designed for individual properties rather than area wide action and it can be time consuming.

- 1.7 One of the failings of this approach is that it must be acknowledged that many tenants, particularly the more economically disadvantaged and vulnerable will perceive a risk in complaining about the condition of their home and may be deterred from complaining due to the fear of retaliatory eviction. There is therefore likely to be under-reporting of deficiencies in the quality of private rented sector housing. Introducing licensing has the effect that it is the responsibility of the landlord or freeholder to apply to be licensed and make any required improvements to their properties.
- 1.8 The Housing Act 2004 gives Local Authorities the power to introduce additional licensing schemes for HMOs or selective licensing schemes for the private rented sector to assist with additional controls to tackle specific issues that may be prevalent in certain wards or the entire district. The following sections explain the two schemes in more detail.
- 1.9 At the meeting of Full Council on 25 February 2020 a motion was received from the Liberal Democrat Group in accordance with Council procedure 14.1 and 14.2 which stated: -
- “The Council is asked to support a request for officers to explore what options might exist for introducing further controls on the definition, number and quality of homes in Multiple Occupation and prepare appropriate reports for the relevant decision body of the Council”*
- 1.10 On 5 November 2020, the Housing and Customer Services Working Group recommended to Cabinet to continue to research and gather further evidence to help establish whether additional House in Multiple Occupation (HMO) licensing or selective licensing of the private rented sector was justified.
- 1.11 In addition Planning Policy presented a report to Development Control Committee on 28 October 2020 to recommend to Full Council that further research was undertaken to establish robust evidence to determine the justification and role for designating Article 4 Direction(s).
- 1.12 Both of these committee decisions were agreed and officers from Private Sector Housing and Planning Policy jointly procured the services of a consultancy to undertake the required additional research.
- 1.13 The Building Research Establishment were successful with their quote and project proposal and have provided the Council with a report on their findings which is appended to this Committee report. Planning Policy will be presenting the research findings in terms of potential Article 4 directions at a later date to Planning Policy Committee.

#### Additional HMO Licensing

- 1.14 This type of scheme applies where a local authority has evidence that a significant proportion of the HMOs in its area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for

those occupying the HMOs or for members of the public.

- 1.15 Properties falling within this additional licensing regime could include properties occupied by 3 or 4 people living together as 2 or more separate households, self-contained flat or converted building. An additional HMO licence could also be required for any purpose-built self-contained flat, which is in a block of 3 or more self-contained flats.
- 1.16 The scope of the additional HMO licensing regime could also include any building that has been converted into and which consists entirely of self-contained flats, less than two-thirds of which are owner-occupied, and where the building works to convert the property into self-contained flats did not meet and still do not meet appropriate building standards. Such properties are known as Section 257 HMOs.
- 1.17 The benefits of introducing this scheme would mean that additional properties would be brought within the scope of a proactive inspection regime i.e. required to obtain a licence, therefore the process as described above for the mandatory licensing would apply i.e. meeting minimum standards, provision of an application form, fee and certificates and the fit and proper person assessment. This would ensure a greater proportion of the private rented sector housing stock is inspected to and regulatory steps are undertaken to ensure they meet the minimum standards. This regulatory activity would be resourced from the licence fees set by the Local Authority and levied on the landlords.
- 1.18 This type of scheme requires landlords who own a HMO that falls within the additional licensing scheme to obtain a licence from the council, therefore putting the emphasis on the landlord to licence rather than relying on tenants to make complaints about the conditions with their property. It is a criminal offence to operate a licensable HMO without a valid licence and landlords may face prosecution, receive a Civil Penalty Notice or a reduced licensing period in consequence of any breach found. With the mandatory scheme linking the requirement to five persons sharing it has been noted that a number of landlords are reducing their occupancy to 4 or less to avoid licensing. The properties would still be required to meet minimum standards, but the Council is unable to enforce additional controls through the licensing regime. Nor would the Council currently check if minimum standards are being met in properties that fall outside of the mandatory HMO licensing regime, except when investigating complaints.
- 1.19 A licence may include such conditions as the local authority consider appropriate for regulating all or any of the following:
- The management, use and occupation of the house concerned, and
  - Its condition and content
- 1.20 Examples of this could include:
- Conditions imposing restrictions or prohibitions on the use or occupation of parts of the house
  - Conditions requiring reasonable steps to prevent or reduce anti social behaviour by persons visiting or occupying the house
  - Conditions requiring facilities and equipment to meet minimum standards
  - Conditions requiring facilities and equipment to be kept in repair and proper

working order.

- Conditions requiring the licence holder or the manager of the house to attend training courses in relation to management of the HMO

1.21 The licensing regime provides for a means by which a single party takes responsibility for the property and to ensure that it is managed effectively.

#### Summary of Building Research Establishment (BRE) Findings – Additional HMO Licensing

1.22 There is an estimated total of 1,396 HMOs in Arun, of which approximately 391 come under the mandatory licensing scheme.

1.23 Marine ward has the highest number of HMOs (193 HMOs, 10% of private rented stock in the ward), followed by River ward (177 HMOs, 9%) and Hotham ward (156 HMOs, 14%). The HMOs in all three of these wards stand out as also having high levels of category 1 hazards as assessed under the Housing Health and Safety Rating System.

1.24 There are 636 buildings with the potential to be a section 257 HMO in Arun. These are properties that have been converted to self-contained flats, the conversion work did not comply with the Regulations and less than two thirds of the flats are owner occupied (the “Section 257 HMO”).

1.25 River, Hotham and Marine have a significant proportion of private rented dwellings located within the 20% most deprived Local Super Output Areas (LSOAs) in England. In addition incidents of Anti-Social Behaviour in recent years (2019 and 2020) have been highest in River and Marine wards.

1.26 This data therefore indicates that due to high levels of disrepair and areas of deprivation within the wards of Marine, River and Hotham that the criteria for additional HMO licensing has been met. These HMOs are not being managed sufficiently effectively and therefore are giving rise or potentially giving rise to problems for the occupants and/or members of the public. The BRE support that additional HMO licensing within these wards would assist in targeting improvements.

#### Selective Licensing in the private rented sector

1.27 Selective Licensing is different to additional licensing as it covers all private rented sector properties to tackle problems in the district or parts of, caused by low housing demand, significant anti-social behaviour, poor property conditions, an influx of migration, high level of deprivation or high levels of crime.

1.28 With effect from 1 April 2015, the “Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval” came into force. This requires local authorities to obtain confirmation from the Secretary of State to introduce any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area.

1.29 Selective licences are required for houses within the designated area where the whole of the house is occupied either under a single tenancy or licence or under two or more tenancies or licences in respect of different dwellings contained in it. There are a number of exemptions to the Selective Licensing regime as follows (as well as for business tenancies):

- A tenancy or licence is exempt from the selective licensing if it is granted by a registered social landlord;
- A prohibition order is in force;
- Agricultural tenancies;
- The property is managed/controlled by a local housing authority or public body;
- The building is regulated under other legislation (e.g. care homes);
- The building is occupied by students controlled/managed by a University/College (who subscribe to an Approved Code of Practice);
- The occupier is a Member Of The Family of the landlord/licensor who himself holds under a lease of the property for a minimum of 21 years;
- Holiday lets;
- The occupier shares any amenity (i.e. a toilet bathroom kitchen or living room) with the landlord/licensor or a Member Of The Family of the landlord/licensor

1.30 Generally, the same rules apply when granting a Selective Licence as with a mandatory HMO licence. The main differences are that:

- It is mandatory to take up references for a prospective tenant before letting a property subject to Selective Licensing; and
- Unlike HMOs the licensing authority does not have to consider suitability for letting or amenity standards when granting a selective licence. However, the licence holder must still be a fit and proper person.

1.31 The Government guidance on selective licensing states that when considering whether to make a selective licensing designation a local authority must first identify the objective or objectives that a designation will help to achieve. In other words it must identify whether the area is suffering problems that are caused by or are attributable to any of the criteria for making the designation and what it expects the designation to achieve, for example, an improvement in property conditions in the designated area.

#### Summary of Building Research Establishment Findings - Selective Licensing

1.32 The report identifies that the overall percentage of dwellings in the private rented sector across Arun is 19% which is comparable to the national average of 19%. Marine, River and Hotham have a percentage of private rented sector dwellings greater than the national average, 52.8%, 40.5% and 39.2% respectively.

1.33 If a selective licensing scheme was introduced in Marine, River, Hotham then confirmation from the Secretary of State would be required as the number of privately rented homes within these three wards constitutes more than 20% of the privately rented homes within the local authority area.

1.34 The BRE data suggests that there are issues of disrepair, deprivation and anti social behaviour in these wards across the wider private rented sector. However, the Council must identify the objective or objectives that the designation will help to

achieve, and government guidance states that a designation for selective licensing should only be made where there is no practical and beneficial alternative. It could be argued based on the HMO data in these wards that an additional HMO licensing scheme would improve the property conditions rather than having to licence the whole of the private rented sector. This is not therefore the recommended option.

### Consultation

- 1.35 Before introducing an additional HMO or selective licensing scheme the local authority is required to undertake a 10 week meaningful consultation with those likely to be affected and also includes those who live, work or operate a business in adjoining local authority areas where they will be affected. Consideration must be given to any representation made in accordance with the consultation.
- 1.36 The consultation should be informative, clear and to the point so the proposal is readily understood. It should inform local residents, landlords, letting agents and businesses about the proposed designation, giving the reasons for proposing it, why alternative remedies are insufficient, demonstrating how it will tackle specific problems together with other specified measures and describing the proposed outcome of the designation. It should also set out the proposed fee structure and level of fees the authority is minded to charge (if any). Consultees should be invited to give their views, and these should be considered and responded to.
- 1.37 Once the consultation has been completed the results should then be published and made available to the local community. This should be in the form of a summary of the responses received and should demonstrate how these have either been acted on or not, giving reasons for the decision.
- 1.38 Following this 10 week consultation period the proposed scheme can then come into force no earlier than 3 months after the designation has been approved and will be in operation for a maximum of 5 years. The operation of the proposed scheme would need to be reviewed from time to time and can be revoked at any time subject to notice of the decision being published.
- 1.39 A small benchmarking exercise has been undertaken with Local Authorities that have recently implemented additional HMO licensing schemes and they have emphasised the importance of the consultation stage and using the opportunity to engage with a range of stakeholders. Examples of methods that have been employed include:
- Online questionnaire
  - Information on the Council's website
  - Information to be included on neighbouring local authority websites.
  - Press releases, residents magazines, social media
  - Landlord forums
  - Surgeries within wards affected
  - Stakeholders events – tenants, letting agents, voluntary organisations, charities
- 1.40 In addition the benchmarking established that on average a Full Time Equivalent (FTE) resource was required to produce a consultation report which will form part of the process, this will detail the reasons for introducing the scheme, provide relevant

statistics and data, provide details of the proposed fee structure and minimum standards that the properties will be required to meet.

1.41 Any response to the consultation will need to be considered and responded to and then a final report will be produced summarising these. This report will be presented to members for their consideration to decide whether to agree to the designation of the scheme.

#### Resources

1.42 The aim is that the consultation and surrounding preparatory work would be undertaken by a member of the Private Sector Housing Team, therefore a resource will be required to backfill their position whilst they complete this piece of work. An agency member of staff would cost in the region of £45 per hour, full time for a period of 6 months would be £39,960. This would be specifically to undertake the consultation work, and once this has been completed a report summarising the consultation responses will be provided to members to review and decide whether to implement the licensing scheme. If members agree to implement a licensing scheme then additional resources will be required and this will be a budget growth.

1.43 With any licensing scheme fees can be charged to cover the cost of administering the scheme. An analysis of the current mandatory licensing regime has been undertaken to ensure the Council has used a clear evidence base to set fees in order to fully recover the allowable costs it incurs in regulating these properties. A similar review would be required if an additional licensing scheme was implemented and this would also form part of the consultation process.

1.44 Growth in establishment would be required in order to administer any scheme which would potentially require 1FTE Team Leader position (Scale 11/MG3), 2 FTE HMO Officer/Environmental Health Officer (Scale 8/SO2) and 0.5FTE Technical Support Assistant post (Scale 4). The annual growth in the establishment of 3.5 FTE's as above would require an additional £161,000 (£805,000 over 5 years) which if the scheme is approved, would require approval of supplementary funding.

1.45 Fees are currently set on a sliding scale based on the number of occupants, however, across 344 extra properties that would fall within the scope of the proposed additional HMO licensing scheme, this would equate to an average license fee of something in the region of £1,000.

1.46 In view of this potentially over a 5 year period this would provide an income of approximately £344,000.

1.47 Income will not be received equally over the 5 year period, Officers have found with the existing mandatory scheme that there is initial work in identifying HMOs and also the enforcement work involved in ensuring licences are obtained. From the administration of the mandatory HMO licensing scheme there is not a clear profile for receipt of income and it will not be evenly spread across the five years. It is expected that year 1 will be relatively low as the scheme is introduced and applications are administered and the year 2 and 3 will see an increase.

1.48 It should be acknowledged that some of the initial work in identifying licensable HMOs will not be cost recoverable. The fees will recover costs for:

- Processing of license application, data entry and receipt of fee
- Officer pre-inspection checks

- Property inspection
- Officer assessment against HMO minimum standards and HHSRS
- Production of draft license and consultation with all interested parties
- Issuing of full licence
- Property inspection to review and ensure conditions have been met

1.49 The licence fee does not cover costs associated with proactively identifying licensable HMOs, publicity or setting up the scheme and any potential enforcement activity associated with finding unlicensed HMOs.

1.50 Section 257 building will also bring their own challenges in that Officers will need to confirm that they do not meet current building regulations and over two thirds of the flats are rented. The building and flats could be in different ownerships therefore access and inspections could be more time consuming than for a 3 or 4 bed shared house for example.

1.51 Additionally, when HMOs are licensed most will have conditions attached in relation to works that are required to bring the properties up to minimum standards. Licence holders are given timescales in which to carry out these works, and officers will monitor to ensure they are completed, this in turn has an impact on officer time.

1.52 In view of this it is important that any licensing scheme has sufficient resources to ensure that it can be implemented and enforced effectively.

## **2. PROPOSAL(S):**

2.1 Agree to instigating the consultation process for a proposed additional licensing scheme for houses in multiple occupation for the wards Marine, Hotham and River, to cover privately rented properties occupied by three or four people making up two or more households and properties converted into self-contained flats that meet the definition of Section 257 HMOs.

2.2 Recommend a supplementary estimate of up to £40,000 to Policy and Finance Committee and Full Council for additional resources to support the consultation process required to implement the additional licensing scheme for houses in multiple occupation. This is a Band D Council Tax equivalent of 63p.

## **3. OPTIONS:**

### Alternatives to the recommendations:

3.1 To agree not to pursue additional HMO licensing. Officers would therefore continue to investigate complaints reactively rather than being able to proactively tackle the standard of accommodation through inspection.

3.2 To employ additional staff to implement a proactive inspection regime without introducing additional HMO licensing of the private rented sector. This approach would assist with tackling poor housing conditions, but without the creation of a licensing scheme enforcement powers are more restricted. This option would also require additional funding from the Council's general fund to recruit staff and unlike with a licensing scheme costs cannot be recovered through fees.

3.3 To agree to pursue selective licensing. The data does not significantly supporting this

course of action in advance of introducing additional HMO licensing which should address the property condition issues within the wards identified.		
<b>4. CONSULTATION:</b>		
Has consultation been undertaken with:	<b>YES</b>	<b>NO</b>
Relevant Town/Parish Council		X
Relevant District Ward Councillors		X
Other groups/persons (please specify) Finance, Legal, Residential Services, Community Safety	X	
<b>5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)</b>	<b>YES</b>	<b>NO</b>
Financial	X	
Legal	X	
Human Rights/Equality Impact Assessment	X	
Community Safety including Section 17 of Crime & Disorder Act		
Sustainability		X
Asset Management/Property/Land		X
Technology		X
Other (please explain)		
<b>6. IMPLICATIONS:</b>		
<p>6.1.1 Financial: The report requires a supplementary estimate of up to £40,000 be requested from Policy and Finance Committee and Full Council for additional resources to support the consultation process required to implement the additional licensing scheme for houses in multiple occupation. This will be reported to Policy and Finance Committee/Full Council as appropriate. This is a Band D Council Tax equivalent of 63p. This is a non-recurring commitment and will be financed from balances in 2022/23.</p> <p>6.1.2 In addition it is expected that over a 5 year period the recommendation would provide an income of £344,000. If approved, this income will be included in future MTFs projections.</p> <p>6.1.3 If the scheme is approved a further growth in the permanent establishment would be required of £161,000 or £805,000 over the 5 years. This report concerns funding for consultation only. If the scheme is to be introduced, a further report will be presented to this committee outlining the establishment growth.</p> <p>6.1.4 The projections indicate increased spend of £805,000 over 5 years and increased income of £344,000; a net budget growth of £461,000. This should be considered if the scheme is implemented.</p> <p>6.2 Legal: To implement an additional HMO licensing scheme a legally prescribed consultation process must be followed. Increased enforcement and potential appeals via the First Tier Tribunal will impact on the resources of the Legal Services Team.</p>		

6.3 Equality: No adverse impacts on protected characteristics have been identified but a formal consultation for an additional licensing scheme would provide the opportunity for further consideration.

## **7. REASON FOR THE DECISION:**

7.1 The Council's vision sets out that we will be "delivering the right homes in the right places" and that to achieve this, amongst other measures, the Council will "ensure the existing housing stock in the district (private sector and council owned) is maintained to a high standard". Should the council decide as a consequence of the consultation proposed here to introduce additional HMO licensing in the three wards, it will directly contribute to ensuring that the existing housing stock in the district (private sector Houses of Multiple Occupation) is maintained to a high standard".

7.2 The proposal also directly delivers on the quality aspect of the Full Council motion: *"The Council is asked to support a request for officers to explore what options might exist for introducing further controls on the definition, number and quality of homes in Multiple Occupation and prepare appropriate reports for the relevant decision body of the Council"*.

## **8. BACKGROUND PAPERS:**

Equality Impact Assessment

Report to and Decision of Housing and Customer Services Working Group 5 November 2020 - [Arun District Council](#)

Building Research Establishment – Draft - Additional Analysis of the Private Rented Sector, including HMOs