

AGENDA ITEM NO.

ARUN DISTRICT COUNCIL

**REPORT TO AND DECISION OF HOUSING AND CUSTOMER
SERVICES WORKING GROUP
ON 22 OCTOBER 2020**

PART A : REPORT

SUBJECT: Options for introducing further controls on the quality of Houses in Multiple Occupation: Additional or Selective Licensing Regimes

REPORT AUTHOR: Nat Slade, Group Head of Technical Services
DATE: 27 August 2020
EXTN: 37683
PORTFOLIO AREA: Technical Services

EXECUTIVE SUMMARY:

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”.

The report provides information and looks at the options to introduce an additional licensing scheme for houses in multiple occupation or a selective licensing scheme for the private rented sector as a means of addressing the quality of houses in multiple occupation. The advantages and disadvantages of these schemes are explored within the report and recommendations are made in relation to the most appropriate course of action.

RECOMMENDATIONS:

Members are requested to recommend to Cabinet:

1. To agree that officers continue to research and gather further evidence to help support whether additional HMO licensing (Housing Act 2004, s.56-60) or selective licensing of the private rented sector (Housing Act 2004, s.80-84) is justified.
2. To approve a supplementary estimate of up to £20,000 (which equates to a band D equivalent of £0.32) to commission the services and expertise to undertake the appropriate research and collation of data in order to support whether additional HMO Licensing or selective licensing of the private rented sector is justified.

1. BACKGROUND:

- 1.1 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”

- 1.2 In response to this motion Planning Policy will be presenting a report to Development Control Committee, likely to be on 28 October 2020, recommending that further robust evidence is obtained before determining whether there is a case for introducing an Article 4 direction which would assist in controlling the number of Houses in Multiple Occupation in an area.
- 1.3 This report seeks to explore the options for further controls to deal with the quality of Houses in Multiple Occupation within the district as requested by the motion.
- 1.4 The private rented sector is an important part of our housing market and Houses in Multiple Occupation (HMOs) form a vital part of this sector, often providing cheaper accommodation for people whose housing options are limited. Some HMOs are occupied by the most vulnerable people in our society. These people live in properties, many of which were not built for multiple occupation, where the risk of overcrowding and fire can be greater than with other types of accommodation.
- 1.5 The meaning of house in multiple occupation is defined in the Housing Act 2004 sections 254 – 257 and can apply to:
 - An entire house or flat which is let to 3 or more tenants who form 2 or more households and who share a kitchen, bathroom or toilet.
 - A house which has been converted entirely into bedsits or other non-self-contained accommodation and fit the above criteria.
 - A converted house which contains one or more flats which are not wholly self-contained and is occupied by 3 or more tenants forming 2 or more households.
 - A building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than 1/3 of the flats are let on short-term tenancies.
 - The property must be the tenants’ only or main residence and should be used solely or mainly to house tenants. Properties let to students and migrant workers will be treated as their only or main residence, and the same will apply to properties which are used as domestic refuges.
- 1.6 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.
- 1.7 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.

- 1.8 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.
- 1.9 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 1st October 2018 which removed the storey requirement as part of the definition for those properties required to be licensed under the mandatory scheme.
- 1.10 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 161 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.
- 1.11 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.
- 1.12 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.

- 1.13 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.

Additional Licensing of HMOs

- 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 Before introducing such a 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.
- 1.19 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 all be considered and responded to.

- 1.20 The Department of Communities and Local Government (DCLG) paper, 'Approval steps for additional and selective licensing designations in England' (Revised February 2010) gives examples of properties being managed sufficiently ineffectively, and these include:
- Those whose external condition and curtilage adversely impact upon the general character and amenity of the area in which they are located
 - Those whose internal conditions (e.g. Poor amenities, overcrowding etc) adversely impact the health and safety and welfare of the occupiers and the landlords of those properties are failing to take appropriate steps to address the issues
 - Those where there is 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
 - Those where the lack of management or poor management skills or practices are otherwise adversely impacting upon the health, safety and welfare of the residents and/or impacting upon the wider community.
- 1.21 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.
- 1.22 Following this 10-week consultation period the proposed scheme can then come into force no earlier than 3 months after and will be in operation for a maximum of 5 years.
- 1.23 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.
- 1.24 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
- 1.25 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.

1.26 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.

1.27 Using the recent private sector housing modelling data obtained from the BRE, Table 1 below illustrates the housing stock across the district with approximately 1329 HMOs which is 9% of the total housing stock and 280 of these HMOs are licensable under the Governments mandatory scheme.

Table 1 – District Wide Housing Stock Type

Tenure	Dwelling Total
All Stock	74,388
Owner Occupied	53,130
Social	6,835
Private Rented	14,423
Houses in Multiple Occupation	1,329
Licensable Houses in Multiple Occupation (Mandatory Scheme)	280

1.28 The BRE data also identifies via modelling whether there are likely to be poor conditions, this is identified by whether a category 1 hazard as defined by the Housing Health and Safety Rating System is present, there is a fuel poverty indicator or there is disrepair. Table 2 shows this data specifically for HMOs.

1.29 The BRE model their data based on information from Experian, Ordnance Survey, Energy Performance Certificates, English House Survey and tenancy deposit scheme information. Therefore, using statistical models, they are able to predict on the basis of probabilities the different types of dwellings and the conditions. The more information that can be provided for the analysis the greater the accuracy, unfortunately due to the time constraints for the recent stock modelling project the council was unable to provide HMO data or council tax information which may have assisted in greater accuracy and detail of information provided.

Table 2. BRE Data - HMO Stock Condition

Type of Condition Identified	Number of HMOs	Percentage of HMO Stock
Category 1 Hazard as defined by the Housing Health & Safety Rating System	129	9.7%
Fuel Poverty Indicator	327	24.6%
Disrepair	19	1.4%

1.30 This data indicates that there is not a high percentage of poor conditions within the HMO stock.

1.31 Based on this initial information it is considered that there would not be sufficient data to robustly justify the poor conditions criteria for the additional HMO licensing scheme without further in-depth investigation and analysis.

Finances and Resources

1.32 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. Additional resources 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). Fees are currently set on a sliding scale based on the number of occupants, however, across 1000 extra properties this would equate for a 3-4 person HMO to a 5-year license fee of something in the region of £1000.

1.33 Officers have found with the existing mandatory scheme that there are potentially more HMOs within the district than have currently been licensed, therefore this increases the proactive work officers are required to undertake to identify these properties and also the enforcement work involved in ensuring licences are obtained. Therefore, it should be acknowledged that some of the initial work in identifying licensable HMOs will not be cost recoverable.

1.34 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 the officer's time.

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

Selective Licensing in the private rented sector

1.36 The Housing Act 2004 also introduced the power for Local Authorities to introduce

selective licensing of privately rented homes in order to tackle problems in their area or any parts or parts of them, 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. It must therefore be emphasised that this type of scheme differs from additional licensing in that it would require any private rented accommodation within a specified area to be licensed and is not specific only to HMOs.

1.37 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.

1.38 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

1.39 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.

1.40 There are currently approximately 43 Selective Licensing areas in England, mostly in the larger cities such as London, Manchester, Nottingham, Leeds, Newcastle, etc., and locally in Brighton & Hove and Hastings most of which suffer from

traditionally poor housing stock and high levels of anti-social behaviour. (These cities/towns do not necessarily have Selective Licensing across the entire location with some only targeting particular areas).

1.41 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.

1.42 Using the data from the BRE private sector housing stock modelling Arun District has 19% of the housing stock is privately rented which is the same as the national average. The condition of this stock is broken down in Table 3 below.

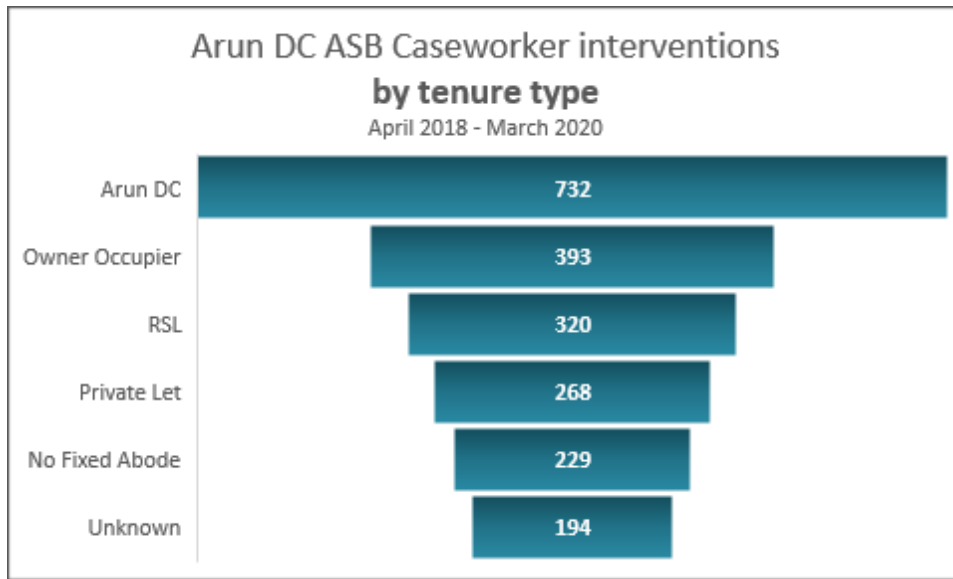
Table 3: BRE Data – Private Rented Dwellings Stock Condition

Type of Condition Identified	Number of Private Rented Dwellings	Percentage of Private Rented Stock
Category 1 Hazard as defined by the Housing Health & Safety Rating System	1110	7.7%
Fuel Poverty Indicator	2358	16.3%
Disrepair	535	3.7%

1.43 Officers from Community Safety would be supportive of introducing these schemes as it could assist with safeguarding and cuckooing cases where there is a high risk of harm. They also do not foresee a problem with sharing data to feed into any further projects to assist with creating some more accurate information.

1.44 Officers have provided data in relation to anti-social behaviour cases which can be split between tenure types e.g. Owner occupied, private lets etc. In relation to the private let data, without further analysis it is difficult to establish whether the cases are associated with HMOs or the wider private rented sector.

Table 4: Anti Social Behaviour Interventions



- 1.45 In relation to crime statistics the Police do not record property type, therefore the information that officers have access to would be crime levels in general and could identify ward hotspots over the previous year period, but would not specifically identify if this was in relation to HMOs/privately rented properties. Potential further analysis of this data in combination with other information may help to provide some more meaningful evidence.
- 1.46 Looking at the national picture more Local Authorities have opted for additional licensing of HMOs rather than Selective Licensing, as this enables poor conditions in HMOs to be tackled. Locally Brighton and Hove City Council and Hastings Borough Council have introduced these schemes, they have advised to ensure that evidence is significant and robust to assist with effective consultation and to not underestimate the amount of work this will involve.
- 1.47 In view of this further research would need to be undertaken to help determine if a consultation for additional HMO licensing or selective licensing of the private rented sector would be justified. The provision of additional datasets held by the council in regard to HMOs, Council Tax, Environmental Crime and Anti-Social Behaviour, an analysis could be undertaken against the various criterion for additional HMO licensing and selective licensing to identify if either of these schemes would be a justified. Initial enquiries have been made and an analysis of this type would cost in the region of £20,000.
- 1.48 Planning policy are also presenting a report to Development Control Committee, likely to be on 28 October 2020, recommending that further robust evidence is obtained before determining whether there is cause for introducing an Article 4 direction which would assist in controlling the number of Houses in Multiple Occupation in an area. Therefore, there is an opportunity to jointly commission a report that would support both areas and share the costs involved.

2. PROPOSALS:

Members are requested to recommend to Cabinet:			
2.1	To agree that officers continue to research and gather further evidence to help support whether additional HMO licensing (Housing Act 2004, s.56-60) or selective licensing of the private rented sector (Housing Act 2004, s.80-84) is justified.		
2.2	To agree a supplementary estimate of up to £20,000 (which equates to a band D equivalent of £0.32) to commission the services and expertise to undertake the appropriate research and collation of data in order to support whether additional HMO Licensing or selective licensing of the private rented sector is justified.		
3. OPTIONS:			
Other options available to Members:			
3.1	To agree no further action in regard to exploring whether additional HMO licensing or selective licensing of the private rented sector is justified. 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 or selective 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.		
4. CONSULTATION:			
Has consultation been undertaken with:		YES	NO
Relevant Town/Parish Council			
Relevant District Ward Councillors			
Other groups/persons (please specify) Finance, Legal, Community Safety, Residential Services, Planning		X	
5.	ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)	YES	NO
	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)		X

6. IMPLICATIONS:

Financial:

The proposal is to continue to investigate for which £20,000 is required. Both potential licensing regimes would allow the Council to set fees to be levied on landlords of the licensed properties to recover the Council's costs in administering the licensing regime. See also paragraphs 1.32 & 1.33.

Legal:

Following further investigation, the Council may decide to propose the introduction of either licensing scheme, for a which a legally prescribed consultation process must be followed.

Equality:

No adverse impacts on protected characteristics have been identified, but a formal consultation on either licensing scheme would provide the opportunity for further consideration.

7. REASON FOR THE DECISION:

7.1 To improve the standard of accommodation in the private rented sector.

8. BACKGROUND PAPERS:

Equality Impact Analysis

Housing Act 2004 – Definition of House in Multiple Occupation