
Cabinet

8th January 2019

Name of Cabinet Member:

Cabinet Member for Housing and Communities – Councillor E Ruane
Cabinet Member for Policing and Equalities – Councillor A Khan

Director Approving Submission of the report:

Deputy Chief Executive (Place)

Ward(s) affected:

All

Title: Additional Licensing in Coventry

Is this a key decision?

No – although this matter affects all wards, as the proposal is to go out to consultation, this would not cause a significant impact and consequently is not deemed to be a key decision.

Executive Summary:

The provision of good quality housing for Coventry residents is a key priority for the City Council. Privately rented property is a key part of this provision although Houses in Multiple Occupation (HMOs) can be a major concern in Coventry. With around 6,800 HMOs or 26% of the total Private Rented Sector (PRS) stock. Coventry is one of the top ten of authorities in England and Wales.

It is recognised that there are many good quality landlords operating in the City, but unfortunately there are also those who do not maintain their properties leaving tenants at risk and giving potential problems to neighbouring properties.

Under the Housing Act 2004 Government have legislated to provide local authorities with powers to tackle poor quality HMOs in the PRS through Mandatory Licensing, however this only relates to those HMOs that have 5 or more occupants from two or more households.

Although planning policy has been developed to create and sustain as appropriate 'mixed and balanced communities', by encouraging the spread of sustainable and viable options for accommodation, the City does have large areas where HMOs within the PRS are substantial in number.

HMOs with 3 or 4 occupants from 2 or more households form an unusually high percentage of houses in the City (approx. 63%) and provide much needed accommodation for residents, particularly students who would typically live in this type of accommodation following their first year at university. The designation of a Citywide Additional Licensing scheme would therefore enable the Council to regulate all HMOs.

Due to the timescale for this matter, in accordance with Paragraph 19 of the City Council's Constitution, Councillor T Khan, the Chair of the Scrutiny Co-ordination Committee, has been invited to attend the meeting for the consideration of this matter to agree the need for urgency such that call-in arrangements will not apply. The reason for the urgency is that due to the breadth of the consultation required, there is a need for it to commence at the earliest opportunity so as not to delay the proposed timetable for implementation.

Recommendations:

Cabinet is recommended to:

1. Consider the Additional Licensing Feasibility Report 2018 and resolve there is a need for a Citywide Additional Licensing scheme.
2. Authorise a Citywide statutory 10 week consultation beginning on the 9th January 2019 and ending on the 20th March 2019.
3. Request a future report to Cabinet following the conclusion of the consultation for a decision to be made regarding the structure of the Additional Licensing scheme and designate the scheme under the General Consent Order.

List of Appendices included:

- Appendix 1 – Additional Licensing Feasibility Report 2018
- Appendix 2 – HMO Licensing Policy 2018
- Appendix 3 – RICS Private Rented Sector Code of Practice
- Appendix 4 – Timeline for Additional Licensing
- Appendix 5 – HMO Licence Fees and Charges
- Appendix 6 – Equalities Impact Assessment

Background papers:

Private Rented Stock Condition Survey 2013

Other useful documents:

- Cabinet Member for Business, Enterprise and Employment Meeting Minutes 29th March 2016
- Housing and Homelessness Strategy 2019-2024
- Housing Act 2004.
- Additional and Selective Licensing in the Private Rented Sector - A Guide for Local English Housing Survey Private Rented Sector Report 2014-15 Authorities, published by the MHCLG in March 2015.
- General Approval April 2015

Has it been or will it be considered by Scrutiny?

The Chair of Scrutiny has been invited to attend the Cabinet meeting.

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

None.

Will this report go to Council?

No.

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Report title: Additional Licensing in Coventry

1. Context (or background)

- 1.1. During the Municipal year 2013/14, Scrutiny Co-ordination Committee established a Task and Finish Group to look at the issue of Houses in Multiple Occupation (HMOs). One of the outcomes of this review was that licensing for private rented sector housing should also be looked at in more detail.
- 1.2. HMOs are properties that are occupied by a least 3 different tenants, forming more than 1 household whereby the tenants share facilities such as cooking or sanitary facilities. The definition of a HMO includes bedsits, shared houses, flats, lettings with their own facilities but which are not self- contained, and some types of poorly converted self-contained flats.
- 1.3. Through the review into HMO's, it was recognised that there were issues with the private rented sector generally in the City, not just those in multiple occupation. Concern has been raised from residents as to the quality of some of the housing provided by the sector and residents in some areas of the City have also experienced anti-social behaviour, fly-tipping and noise nuisance in areas where there are large numbers of rented property.
- 1.4. Members therefore instructed officers to conduct further research into the potential for Selective Licensing in targeted areas of the City. This resulted in consultation on a scheme in the St Michaels ward (excluding the City centre). The consultation responses raised a number of queries mainly around fee structure and fairness of a scheme that proposed to treat all landlords the same whether compliant or non-compliant. Following the consultation Members requested further work to be carried out to not only look at the fee structure but also to look at the evidence base for considering not only a wider area for a Selective Licensing scheme but also other licensing options that could, together with Selective Licensing, address the issues with the private rented sector.
- 1.5. In considering the evidence for a wider Selective Licensing scheme it became clear that there was the potential to also consider Additional Licensing. As such a feasibility report into the potential for Additional Licensing has now been completed and is provided at Appendix 1.
- 1.6. The Housing Act 2004 provides the power to the Council to introduce an Additional Licensing Scheme in its area. The power was intended to address the impact of poor quality HMOs that fall outside of the mandatory licensing HMO definition and address management issues and poor property conditions.
- 1.7. A designation may apply to certain descriptions of HMOs or to all HMOs (other than those subject to mandatory licensing) in the designated area.
- 1.8. Following the issue of a General Consent in April 2015 by the Secretary of State, Local Authorities in England do not have to seek approval for the introduction of an Additional Licensing scheme provided all necessary conditions are complied with.

- 1.9. The Council has taken this into account when considering HMOs against the criteria and has used a variety of data sources to support the proposals to designate the whole of the City subject to Additional Licensing.
- 1.10. The 2004 Act also requires authorities considering designating an area as subject to Additional Licensing to:
 - A) take reasonable steps to consult persons who are likely to be affected by the designation; and
 - B) consider any representations made in accordance with the consultation.

2. Options considered and recommended proposal

- 2.1. The feasibility report recommends the Council proceeds with Additional Licensing across the whole of the City.
- 2.2. 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 a HMO licence which the Council will determine using the criteria laid down in the HMO Licensing Policy 2018 attached at Appendix 2. 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, 2 or 5 years based upon the eligibility of the landlord.
- 2.3. The Council has taken into account 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 managing the opportunities for the non-compliant landlords through higher fees and shorter licences. This is reflected in the fees and charges structure and the eligibility for licences.
- 2.4. Accreditation will be given to those landlords and agents who are experienced, knowledgeable in their profession and are committed to following the good practice principles set out in the Royal Institution of Chartered Surveyors (RICS) Private Rented Sector Code of Practice, which was endorsed by the Minister of State for Housing and Planning in July 2015 and is attached as Appendix 3.
- 2.5. Reactive and proactive services will be carried out to address complaints about property conditions, poor management practices and identifying unlicensed properties.
- 2.6. 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.
- 2.7. The proposed fees and charges, discussed further in Section 5 have been developed in order to reach an appropriate fee to consult on the proposed structure of the scheme. In arriving at the proposed fees the Council has

attempted to provide incentives for compliant landlords whilst providing sufficient resources to ensure that the scheme can be effectively delivered and every property can be inspected before a licence is issued.

- 2.8. In cases of a registered `not for profit` charity i.e. Cyrenians or an individual housing provider, such as a private landlord or organisation who is assisting the Council by offering permanent accommodation to meet our homelessness duties applications will be accepted, for the particular property being provided without a fee being payable. An assessment of the organisation will then be carried out and if appropriate the Council will determine the application and issue a licence without requiring any fee. Each case will be considered on its merits based on the type of individual or organisation submitting the application and the removal of the fee requirement will only be applied to the licence for the house being provided for homelessness purposes.
- 2.9. This is to reflect that many registered charities provide a valuable service to people who are homeless, or are living in insecure accommodation, and that charities should be supported in those aims it is proposed that registered charities contributing to the Council's housing priorities (as identified in the housing and Homelessness draft Strategy) be exempt from Additional Licensing fees.
- 2.10. Licences will include all of the mandatory conditions required under the legislation, for example, providing gas and electrical certificates and maintaining health and safety standards, as well as additional (discretionary) licence conditions to address issues such as ASB and environmental / management issues.

3. Consultation

- 3.1. There is a statutory requirement to consult for a minimum period of 10 weeks on any proposals to designate an area subject to Additional Licensing. This report sets out recommendations to conduct a consultation and for the results of the consultation to be considered as part of the development of the proposed structure of the Additional Licensing scheme.
- 3.2. The consultation will demonstrate that it has satisfied the legal requirement to take reasonable steps to consult with those people who may be affected by the designations. This includes neighbouring areas outside of the City boundary.
- 3.3. A consultation plan has been produced setting out how the Council will meet these requirements, in summary this will include the following.
 - Online questionnaire tailored to gauge cross section of views on the proposals;
 - Focus groups with key stakeholder groups i.e. Landlords, Agents, Tenants, Residents and other key organisations such as the Police;
 - Drop in sessions in various parts of the City;
 - E-communications through social media and the Council's website; and
 - Workshops with Landlords and Agents to present the proposals.

3.4. Upon the completion of the consultation a report detailing the consultation results will be referred back to Cabinet for consideration at a future meeting.

4. Timetable for implementing this decision

4.1. The proposed timetable for implementing the recommendations of this report is set out at Appendix 4. The key dates for this process include the approval of this report to Cabinet with the proceeding consultation commencing on the 9th January 2019 for a period of ten weeks and ending on the 20th March 2019. The Council is then required to designate the area under the General Consent Order. Once the designation has been made it will come into force three months after the date of confirmation. This is a statutory time period of 12 weeks to allow for any application for Judicial Review. A period of time has been allocated to recruit and to develop the systems required to meet the significant undertaking to licence all HMOs in the area hence the commencement date of early/mid 2020. Once a designation comes into force it will last a maximum of five years.

5. Comments from Director of Finance and Corporate Services

5.1. Financial implications

Section 63 of the Housing Act 2004 permits the Council to require any application for a licence under Part 2 to be accompanied by a licence fee and that this fee may properly cover all costs incurred by the Council in carrying out its functions.

When setting the fees and charges structure for the licensing scheme to go out for consultation the Council has taken into account the staff costs, training, administration and publicity and that it is not allowed to use licensing fees to raise revenue for other projects or areas of work.

The proposed fees and charges structure set out in Appendix 5 is cost neutral and will have to be consulted on and ratified prior to the introduction of the scheme. The financial implications are based on the fees being set for the consultation.

The financial modelling of the scheme estimates income and expenditure cash flows as below. This shows that the scheme is modelled to break even over its 5 year life.

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	£ million	£ million	£ million	£ million	£ million	£ million
Expenditure	1.2	1.2	1.2	1.3	1.3	6.2
Income	(0.4)	(1.3)	(1.4)	(1.5)	(1.5)	(6.2)
Net Total	0.7	(0.1)	(0.2)	(0.2)	(0.2)	0

The modelled activity suggests that an additional 24 full time equivalent staff would be required to administer the scheme. There is therefore a financial risk that the number and type of licences issued in real life differ from the model and the amount of income received does not cover the costs of operating the scheme. In order to mitigate this risk:

- The financial position of the scheme will have to be carefully monitored and action taken to control costs if necessary.
- The fees and charges structure will be reviewed on an annual basis and if there is a need to increase fees to cover any potential shortfall then this will be recommended and reported through the budget setting process.

There could also be a financial risk to be managed at the end of the 5 year scheme as if the scheme is not continued or the size of the scheme reduces, there will be costs associated with scaling down the team. Again this will have to be closely monitored throughout the initial 5 years.

Implications of Hemming v Westminster Case

The European Union Services Directive 2006 changed the basis upon which fees for certain licences and permissions could be charged by the issuing authorities. In particular licensing authorities may not set fees that are dissuasive, and any fees must be reasonable and proportionate to the cost of the licensing process and the issuing of the licence. These provisions have been taken into account in the proposed fees for consultation.

In addition a recent judgement, in the Supreme Court (Hemming v Westminster case UKSC 2013/0146), has provided further clarification of the type of costs which may be taken into account when setting fees, and when fees may be payable. The Council will follow this decision and therefore the proposal is that fees will be payable in two parts to meet with the European Directive requirements.

5.2. Legal implications

In April 2015 the Secretary of State for Communities and Local Government gave Local Authorities general approval regarding the approval steps for additional and selective licensing designations in England. When considering the introduction of an Additional Licensing scheme the Council must proceed through the statutory process as laid out in Section 56 and 57 and the guidance issued under the Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015.

Section 56 of the Act places requirements upon the Council 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 particular problems either 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 not withdrawn; 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).

Section 57 provides further considerations for the Local Authority 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 behavior affecting the private rented sector 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 problem or problems in question; and
- That making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action as well).

The General Approval provides the condition that any consultation period for the proposed designation should not be less than 10 weeks.

The guidance for the general approval also 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 behavior 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 residents and/or impacting upon the wider community.

Part 2 of the Housing Act 2004 sets out the scheme for licensing HMOs in a local housing authority area. Under section 56(1) of the Act a local housing authority

can designate the whole or any part or parts of its area subject to additional licensing. Where an additional licensing designation is made it applies to all HMOs specified in the designation.

6. Other implications

6.1. How will this contribute to achievement of the Council's Plan?

The Council Plan takes forward the main themes agreed by the Council in recent years. It reaffirms the Council's ambition – developed with the Strategic Partnership and partners to make Coventry: A Top Ten City.

This ambition is driven through three corporate priorities which directly address the needs of the city and include, in particular;

- Promoting the growth of a sustainable Coventry economy by;
 - Increasing the supply, choice and quality of housing.
- Improving the quality of life for Coventry people by;
 - Improving the health and wellbeing of local residents
 - Protecting our most vulnerable people
 - Reducing health inequalities

The Health and Wellbeing Strategy 2016-19 recognises that creating health, wealth and happiness requires more than simply managing people's health problems.

The health and wealth being of people can be improved if people have jobs, good housing, and are connected to families and communities.

The Council's Housing Strategy 2013-2018 affirms the Council's view that housing plays a crucial role in the economic growth of the City. The ambition for Coventry is "*to ensure decent homes, housing choice and support for Coventry citizens*" through various themes including:

- Increase the supply, choice and quality of new housing;
- Prevent and tackle homelessness;
- Strive for a healthier and more sustainable City by improving the quality and use of stock; and
- Encourage balanced, stable and sustainable communities.

The Housing Strategy 2013-18 has now been combined with the Homelessness strategy into one document known as the Housing and Homeless Strategy 2019-24, which, at the time of preparing this report is subject to public consultation and not approved. The new strategy does however set out four themes which are relevant to this proposal and the objectives of the scheme, namely;

- Preventing Homelessness
- New Housing Development
- Improving the use of Existing Homes

- Support for People and Communities.

The Housing Strategy links into the Council Plan and the Health and Wellbeing Strategy by contributing to the delivery of the key corporate priorities but also in supporting the local economy through ensuring communities have stable and safe places to live.

Globally connected - Promoting the growth of a sustainable Coventry City Council economy

The proposals set out in this report will also contribute toward the increase the supply, choice & quality of housing within the designated area and reduce the impact of poverty through supporting residents experiencing fuel poverty.

It will help tackle environmental and anti-social behaviour crime supporting a vibrant business environment and will help raise the profile of Coventry by the improvement of the environment and housing within the area, thereby making it attractive to retaining skilled graduates in the area.

Locally committed - improving the quality of life for Coventry people

Additional Licensing will, together with other agencies, make communities safer and reduce crime and anti-social behaviour.

It will improve health and wellbeing by providing safer and healthier rented accommodation that is well managed with reduced overcrowding and will reduce health inequalities and protect the most vulnerable by improving the standard of poorly managed homes without the need to report problems. It will help prevent homelessness due to poorly managed or rogue landlord actions.

6.2 How is risk being managed?

The statutory process required to designate an Additional Licensing scheme is being followed to ensure full compliance and a minimum 10 week consultation will be undertaken.

The consultation will be designed to ensure our compliance with legislation and statutory guidance, minimising the risk of legal challenge.

6.3 What is the impact on the organisation?

The approval of the recommendations to conduct a consultation should have limited impact on the organisation. There is no human resource, financial or ICT implications as the consultation exercise will be carried out using current resources.

The implementation and delivery of the scheme will require additional resources which have been accounted for within the fees and charges for licences. Delivery of this scheme will require approximately 24 staff. A recruitment process will need to be carried out to secure the necessary resources and this is programmed in to take place before the Scheme comes into effect thereby limiting the risk and impact on the organisation.

6.4 Equalities / EIA

The report makes links to the Council's Equality and Diversity Policies and a specific Equalities Assessment has been completed for this report and is attached at Appendix 6.

6.5 Implications for (or impact on) the environment?

The option of "do nothing" considered in the feasibility report is likely to result in significant impacts particularly when the Council will otherwise have very limited ability to maintain and improve HMO conditions, for example: energy efficiency and thermal performance, waste management and household waste recycling.

6.6 Implications for partner organisations?

The proposals to consult on an Additional Licensing scheme contributes towards the work of the Community Safety Partnership.

The effective operation of the consultation will enable the Council to make clear and informed decisions about the structure of the Additional Licensing scheme in the City which will directly impact on the quality and management of HMOs in the PRS and on the co-existence of HMOs with local residents and communities.

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