

Report



Cabinet Member for Licensing & Regulation

Part 1

Date: 7 February 2019

Subject Licensing of Houses in Multiple Occupation in Newport - Additional Licensing Scheme

Purpose To obtain approval for the re-designation of a city-wide Additional Houses in Multiple Occupation Licensing Scheme in Newport for a further five years

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Ward City Wide

Summary The Housing Act 2004 provides for Local Authorities to designate an area as subject to a scheme for the Additional Licensing of Houses in Multiple Occupation for a five year period. Newport City Council operated such a scheme from 2008 to 2013 and is currently operating a scheme which is due to expire on 31st May 2019. Re-designation of the Additional Licensing Scheme will enable the continued regulation of multiple occupied properties over and above those premises included in the Mandatory Licensing provisions of the 2004 Act, and build upon the improvement of premises brought about by the Council's current Houses in Multiple Occupation Licensing Scheme.

Proposal To approve a city-wide Additional Licensing scheme for Houses in Multiple Occupation in Newport for a further five years.

Action by Head of Law & Regulation

Timetable Immediate for the Designation of the Scheme. The legislation then requires 3 months "standstill" prior to coming into force.

This report was prepared after consultation with:

- Head of Law & Regulation
- Head of Finance
- Head of People & Business Change
- NCC Building Control
- NCC Development Control
- Landlords and members of the public
- National Landlords Association
- UK Association of Letting Agents
- Gwent Police
- South Wales Fire & Rescue Service

Signed

1. Background

- 1.1 The Housing Act 2004 came into force in Wales in June 2006. The Act introduced new powers for local authorities to regulate standards in the private rented housing sector. In particular, it introduced the duty for local authorities to license certain types of houses in multiple occupation (HMOs), namely those of three storeys or above, and with five or more tenants that comprise two or more households. This is termed "Mandatory Licensing". The Act also provides for local authorities to introduce other types of licensing schemes for different types of HMO: "Additional Licensing".
- 1.2 In April 2007, the Welsh Assembly Government issued guidance to local authorities, (The Housing Act 2004 (Selective Licensing) (Wales) General Approval 2007) indicating that councils may introduce an Additional Licensing Scheme without obtaining Assembly approval, providing that certain requirements of the legislation with regard to evidence, consultation with interested parties and implementation are carried out. In particular, the Council must:
 - a) Consider that significant proportion of the HMOs of that description are being managed 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;
 - b) Consider whether there any other courses of action available to them that might provide an effective method of dealing with the problem or problems in question;
 - c) Consider that making the designation will significantly assist them to deal with the problems, and
 - d) Consult persons likely to be affected by the designation.
- 1.3 In December 2008, Newport City Council declared an Additional Licensing scheme which covered the smaller HMOs within the city. These included all properties with three or more unrelated households as well as poorly converted self-contained flats. A further Additional Licensing scheme was then declared in June 2014 following a public consultation and is currently operational. The licensing process has enabled the Council to tackle a wide range of problems in HMOs by way of conditions attached to licences and by programmed inspections. This has streamlined the mechanisms for enforcing minimum standards and management conditions, including the suitability of the landlord.
- 1.4 Additional Licensing allows the Council to target its resources to deal with some of the most problematic properties within Newport with a risk based approach, with provision of advice, proactive inspections, and enforcement action where necessary. The vast majority of these properties would fall outside of Mandatory Licensing and therefore the properties have largely only been improved because of Additional Licensing.
- 1.5 HMOs form a relatively small but valuable part of the housing stock as there continues to be a need for such accommodation from those who cannot or do not wish to own their own home, for financial reasons or to have flexibility in where they live and for how long. HMOs are present in the market at varying levels of cost and quality, including high quality accommodation which is often not thought of when thinking about the HMO sector.
- 1.6 The Additional Licensing scheme has also had the benefit of assisting City Services' Waste Management team with the improvement of waste and recycling storage facilities for HMOs. This has been achieved by the use of HMO licensing conditions and aims to improve local environments for communities where a small number of problematic HMOs are sited.
- 1.7 There are a number of misconceptions surrounding the powers and duties relating to HMO Licensing:
 - i. Planning (Development Control) status of HMOs

The Housing Act 2004 does not require that a property has the relevant Planning Permission in place in order to obtain a licence. There have been a number of successful

legal challenges against local authorities where those authorities had required relevant Planning Permission to be in place before an HMO licence could be issued. There is now a Planning Use Class in Wales relating to HMOs, so some properties are being regulated differently to the way in which they were regulated when the current licensing scheme commenced.

ii Anti-social behaviour

Under the licence, the Council can require the landlord to deal with anti-social behaviour caused by tenants within the curtilage of the licensed properties. We expect the landlord to inform tenants their behaviour is unacceptable in the first instance and if the behaviour continues to seek possession of the property. If the landlord is compliant with our requests and is seeking possession, there is little else the Council can require of the landlord. The Council is not able to require the landlord to take any action for anti-social behaviour the tenants may cause outside the curtilage of the property.

iii Issuing of tenancies

The Council is not able to dictate to whom landlords choose to let their property. The Council is only able to state the number of tenants permitted to live at the property having given consideration to size of property and numbers of facilities provided within the property.

iv Consultation on draft licences

Under Schedule 5 of Housing Act 2004 consultation on the draft licence is only required to be with landlords, managers and owners of the relevant property. Under the Regulatory Reform (Fire Safety) Order 2005, there is a requirement to consult with the Fire & Rescue Service on all relevant premises. However, there is no legal requirement to consult with neighbours, councillors or members of the public when issuing a licence and the Council is not able to take into account any objections to the licence being issued.

2. Review of HMO Licensing

2.1 The current Additional HMO Licensing Scheme is due to lapse on 31st May 2019. A review of HMO Licensing in Newport has been recently undertaken and the Review & Proposal document can be found at Appendix A to this report. This document was used to provide information to stakeholders in order to support them to make information responses to the public consultation. The review identified that whilst the scheme has made a significant difference to HMOs within Newport, there are still a number of issues within properties, with a number of landlords failing to maintain their properties.

2.2 In order to continue with the proper regulation of HMOs in Newport it is recommended that appropriate licensing is continued by the declaration of a new five year Additional Licensing Scheme, which will enable the Council to address, through licensing conditions, matters of concern to the Council, including those identified by tenants, Elected Members and key stakeholders. It is recommended that the scheme would be applied to the whole of the City (as it is in the current scheme), so as to be equitable across the Council's area and avoid the possibility of some landlords creating HMOs in certain areas so as to avoid the Additional Licensing regime. This would have the effect of distorting the local housing market.

2.3 Although other courses of action available to the Council could deal with some of the issues in HMOs, they will not provide the holistic and more effective powers available through the Additional Licensing Scheme to deal with many of the safety and environmental issues encountered in smaller HMOs. The continuation of the Scheme will assist greatly the Council in dealing with the problems and potential problems presented by such HMOs.

3. Licensing fees

- 3.1 It is proposed that should a new Additional Licensing Scheme be agreed, that the current fee structure would be continued. This has evolved over the duration of the previous and current schemes. The fee structure and current fees are set out at page 22 of the Review and Proposal document at Appendix A. During the current Scheme a complete review of the fees was undertaken in order to ensure that the fees were set at a level that recovered the cost of operating HMO licensing, excluding enforcement activity against unlicensed properties. The structure includes the Mandatory Licensing element and further detail is provided at Appendix A. The fees are set as part of the Corporate budget process and it is proposed that the current fees will increase by 4% for 2019/2020.

4. Alternative options to Additional Licensing

- 4.1 The alternative options to regulate HMOs, should City-Wide Additional Licensing not continue are set out from page 9 of the Review & Proposal document included at Appendix A. They are 'targeted proactive inspections & enforcement', 'reactive inspections & enforcement', relying solely on Rent Smart Wales (landlord registration and licensing), Additional Licensing for a limited number of Electoral Wards, and Selective Licensing (licensing of all private sector rented accommodation). None of those alternatives provides a viable alternative to continuing with City-Wide Additional Licensing in the opinion of experienced officers.
- 4.2 One of the responses to the public consultation queried why Additional Licensing is necessary now that Rent Smart Wales is in place. Rent Smart Wales, which requires landlords to register with the all-Wales scheme and managers of properties to gain a licence following training, was introduced during the current Additional Licensing scheme. There seems to be a misconception that it can replace HMO licensing, however this is incorrect as Rent Smart Wales is primarily focussed on landlords' management skills and knowledge, whereas HMO licensing is primarily focussed on property standards. There is a degree of overlap and it should be noted that the aim of Rent Smart Wales is to improve property standards by improving the management of properties, but Rent Smart Wales is not a direct replacement for HMO licensing.

5. Public Consultation

- 5.1 Between 8 October and 16 December 2018, a 10 week public consultation was undertaken to seek the views of all stakeholders. The Review & Proposal document included at Appendix A was used to provide essential information to stakeholders to enable them to make informed responses to the consultation.
- 5.2 The consultation was publicised using the Council's website, social media channels, direct emails to landlords and managing agents, an advert in the South Wales Argus and an article in Newport Matters. National organisations representing landlords were written to directly encouraging them to express their views. Gwent Police and South Wales Fire & Rescue were also directly contacted. We hoped to gain the views of tenants and owner occupiers as well as landlords.
- 5.3 Although the response rate to the consultation was better than the one at the end of the 2008 Additional Licensing Scheme, the small number of responses is disappointing. The results are summarised and commented on at Appendix B. The majority of respondents did not support the proposal to continue with Additional Licensing in Newport. This was expected to be the response of landlords, as they naturally dislike the fees that accompany this form of regulation (and some dislike the regulation of their properties altogether), but what is surprising is the number of owner occupiers (the category for non-landlords) and tenants who also said they did not support the proposal. In the case of owner occupiers it is difficult to understand why they felt this way. It was also disappointing not to receive a response from South Wales Fire & Rescue Service, as we consult them on each licence to seek their views on the fire protection measures required for each property and this regulatory work supports their objectives.

5.4 The responses of Gwent Police were positive and supportive of the proposal.

5.5 The (late) response of the Residential Landlords Association raised some interesting points that have been considered carefully before setting out the Preferred Option below. We disagree with a number of the points raised/advice given.

6. Financial Summary

6.1 As previously mentioned in the Report, the licensing fee structure and amounts were calculated during the current scheme to ensure that HMO licensing was fully funded by the fees but did not make a profit. It should be noted that the fees cover Mandatory as well as Additional Licensing.

6.2 The proposal is to continue with the current fee structure. The fees are set as part of the Corporate budget process and it is proposed that the current fees will increase by 4% for 2019/2020.

6.3 It should be noted that the income from HMO licensing should not be expected to cover the entire cost to the Council of regulating HMOs, as general regulation of the HMO sector must be undertaken even if Additional Licensing not in place. The remainder of the funding required in addition to licensing income is part of the general Council budget for Environmental Health.

7. Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
There will no longer be proactive regulation of a high risk sector of the private housing market should Additional Licensing not be continued.	H	L	The renewal of the licensing scheme would ensure landlords have to comply with the conditions set out in the license and ensures resources are available for proactive inspections of properties.	Head of Law & Regulation
With the removal of the scheme the Council will no longer be able to assess landlords to ensure they are Fit and Proper persons to manage HMO properties which may house vulnerable tenants.	H	L	The renewal of the licensing scheme will allow the Council to continue to assess the suitability of landlords to hold licences and manage HMOs. The Council helps to deliver Rent Smart Wales, which can also determine if landlords are Fit and Proper persons to manage properties.	Head of Law & Regulation
The scheme is not self-financing.	H	L	The fees have been set at an appropriate level to cover the projected cost of delivering an appropriate scheme.	Head of Law & Regulation

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

Additional HMO Licensing will support the following Council Policies and Strategies:

The proposal has clear links to the aims and objectives of Newport City Council's Corporate Plan (relevant themes are "Resilient communities" and "A thriving city").

Wellbeing Plan 2018-2023. The most relevant Wellbeing objectives are: People feel good about living, working, visiting and investing in Newport; and Newport has healthy, safe and resilient environments.

Additional HMO Licensing also supports the Council's strategic housing function by ensuring there is a sufficient supply of good quality housing in Newport. The Council produces policies in relation to this strategic function.

Options Available and considered

To approve the designation of another city-wide Additional Houses in Multiple Occupation Licensing Scheme in Newport. This option would mean that the current Additional Licensing Scheme would be replaced and the Council will be able to continue to licence and improve smaller HMOs which fall outside the Mandatory Licensing category as provided in the Housing Act 2004. This would include the majority of those HMOs currently licensed through the Council's Licensing Scheme.

Not to approve the designation of a city-wide Additional Houses in Multiple Occupation Licensing Scheme in Newport. This option would mean that the current Additional Licensing Scheme would not be replaced and the Council will only be able to licence and improve those larger HMOs which fall into the Mandatory Licensing category as provided in the Housing Act 2004. This would **exclude** the majority of those HMOs currently licensed through the Council's Additional HMO Licensing Scheme.

Preferred Option and Why

To approve the designation of a city-wide Additional Houses in Multiple Occupation Licensing Scheme in Newport. This option would mean that the current Additional Licensing Scheme would be replaced and the Council will be able to continue to license and improve smaller HMOs which fall outside the Mandatory Licensing category, as provided in the Housing Act 2004. This would **include** the majority of those HMOs currently licensed through the Council's Additional HMO Licensing Scheme.

Comments of Chief Financial Officer

This proposal merely seeks to renew current arrangements and as such will have no additional impact on existing budgets. All associated fees will continue to be reviewed annually as part of the budget setting process and are set to recover the appropriate costs in carrying out this regulatory service.

Comments of Monitoring Officer

The proposed action is in accordance with the Council's statutory powers under the Housing Act 2004 to reintroduce an Additional Licensing scheme to continue to regulate houses in multiple occupation which fall outside the scope of the mandatory scheme. In accordance with the Selective Licensing General Approval 2007, issued by the Welsh Government, the Council has carried out a further period of consultation and an assessment of the continuing need for additional licensing controls. It is clear that there is an on-going requirement for these additional regulatory powers and, therefore, a continuing need for this Additional Licensing Scheme. The alternative options do not provide an effective control measure for regulating smaller HMO's and for addressing specific problems associated with these properties. The Council is also able to set reasonable fee levels to recover the cost of the licensing and regulatory process, but this is a secondary issue and the purpose of renewing the Additional Licensing Scheme is to secure housing improvements rather than to generate additional revenue.

Comments of Head of People and Business Change

The designation of another Additional Licensing Scheme is considered to be the most effective way of extending and targeting regulatory powers to improve the standard and management of HMOs across the city. Such a scheme enables the Council to target the most problematic properties with a range of measures, which is particularly important as many of these properties are not covered by the Mandatory Licensing framework. HMOs are known to be concentrated in some of Newport's most deprived communities and quality rented accommodation is vital to prevent further physical and social decline. As

such the scheme would make an important contribution to sustainable development and Wellbeing Objectives (both Newport City Council and Wellbeing Plan partnership objectives) in terms of tenant health, safety and wellbeing, tackling anti-social behaviour, waste and environmental management, contributing to regeneration and safeguarding vulnerable tenants. Furthermore, the proposed Additional Licencing Scheme provides for a preventative and long-term approach; allows for integration and collaboration with Police and Fire and Rescue Service partners and promotes the involvement of landlords in improving the standard of HMOs.

There are no human resources implications arising from the report.

Comments from Non-Executive Members

Councillor D Fouweather

In broad terms I would support the council in continuing the regulation and mandatory licencing of houses in multiple occupation. However I would like to highlight a few concerns,

It is clear from the report that the Allt-yr-yn Ward is identified as having a high proportion of shared house HMOs and a higher number of properties with five or more occupants.. The council should seriously consider not licencing any more HMOs in the Allt-yr-yn Ward as it is clear that we have too many.

In the consultation document there were two areas of concern.

1 68.57% of respondents to the consultatiojn felt that additional licencing requirements had not improved standards. This is concerning as it makes me believe that we are not enforcing the regulation of these properties.

2 65.77% believe that the council are targeting the wrong properties. Why would they think this? Are we actually dealing robustly with bad landlords.

Response:

The Additional Licensing Scheme is intended to regulate housing conditions in HMO's not control where they are located – that is a planning matter, as stated in the Report.

Appendix A includes details of the hazards found in HMOs and the Council is obliged to resolve Category 1 hazards. In addition each property is required to meet a minimum standard before it is possible to issue a licence and it is usual for improvements to be required. Therefore, there is clear evidence that the regulations are being enforced effectively and that standards have been improved. The subjective views expressed in the consultation responses are not supported by reasons or evidence and half of the respondents were owner-occupiers.

Similarly, no evidence or reason has been provided to support the consultation responses which suggested that the Council is targeting the wrong properties. Some of these respondents were landlords and property agents and they may be unhappy with Additional Licensing applying to smaller properties and the impact on their businesses.

Equalities Impact Assessment and the Equalities Act 2010

Please see the Fairness & Equalities Impact Assessment included at Appendix C.

Children and Families (Wales) Measure

The proposals set out in this report are not relevant to the aims of the Children and Families (Wales) Measure.

Wellbeing of Future Generations (Wales) Act 2015

The proposed Scheme would contribute to the following Well-being Goals set out in the Wellbeing of Future Generations (Wales) Act 2015: a prosperous Wales, a healthier Wales and a Wales of more cohesive communities.

The five things public bodies need to think about to show they have applied the sustainable development principle put into place by the Act are set out below:

- **Long term:** Continuing with Additional Licensing ensures that this part of the private rented sector is regulated in a long term way. This provides stability to the sector and therefore confidence to landlords who wish to operate such properties. Communities are therefore supported in a long term, proactive way.
- **Prevention:** Licensing of private rented properties is an important strategy to ensure the Council is proactive and not just responding to complaints and incidents. The Council also delivers functions to enable Rent Smart Wales (registration and licensing of landlords) to be delivered across Wales, with the aim of improving standards of property management.
- **Integration:** There would continue to be a positive impact on Newport City Council's Well-being Goals from Additional Licensing:
 - To improve skills, educational outcomes and employment opportunities.
 - To enable people to be healthy, independent and resilient.
 - To build cohesive and sustainable communities.
- **Collaboration:** This type of regulation ensures that South Wales Fire & Rescue can act in partnership with the Council, as they are consulted on all HMO fire plans and schedules of work for properties. The Fire Service do not have powers to regulate such properties; the Council must regulate them.
- **Involvement:** Efforts have been made to consult all stakeholders on the proposal.

The Council has developed a Wellbeing Plan 2018-2023 alongside partners to meet the requirements of the Act. The most relevant Wellbeing objectives are: People feel good about living, working, visiting and investing in Newport; and Newport has healthy, safe and resilient environments.

Please see the Fairness & Equalities Impact Assessment at Appendix C for more details.

Crime and Disorder Act 1998

The proposed scheme does not have a direct impact on Crime and Disorder but does help to minimise anti-social behaviour in communities and to maintain the quality of privately rented accommodation, which can support local housing from deteriorating and from subsequently undermining the stability and well-being of communities.

Consultation

The Public Consultation is discussed above at Section 5.

Comments received from wider consultation, including comments from elected members, are detailed in each application report in the attached schedule.

Background Papers

Housing Act 2004 - <http://www.legislation.gov.uk/ukpga/2004/34/contents>

Dated: 7 February 2019