



## Report of the Cabinet Member for Delivery & Operations

Council – 4 November 2020

### HMO Licensing Policy 2020

<b>Purpose:</b>	To agree the proposed new HMO Licensing Policy, which includes the Mandatory HMO Licensing Scheme for the whole of Swansea and a new Additional HMO Licensing Scheme for Castle, Uplands and St Thomas electoral divisions.
<b>Policy Framework:</b>	HMO Licensing Policy 2016 Local Housing Strategy 2015 - 2020
<b>Consultation:</b>	Access to Services, Finance, Legal.
<b>Recommendation(s):</b>	It is recommended that Council:  1) Approves the Policy for publication.
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#### 1. Introduction

- 1.1 Houses in multiple occupation (HMOs) provide an important source of affordable housing for people across our communities. The standards of management across the stock are variable.
- 1.2 Council approved its first HMO Licensing Policy in November 2006. This was reviewed in 2008, 2011 and 2015. An Additional HMO Licensing Scheme for Castle and Uplands was first introduced in 2008. The scheme has been re-designated in line with the Policy reviews in 2011 and 2015.

- 1.3 The current HMO Licensing Policy 2016 lays out Council's approach to HMOs across the whole authority area. The Policy includes the requirement for a review.
- 1.4 This report outlines the legal framework and options for control of HMOs within a changing landscape across the private rented sector.

## **2. Legal Framework**

- 2.1 Mandatory HMO licensing is a statutory requirement, which, in Wales, applies to HMOs of three storeys or more that also have five or more occupiers.
- 2.2 Councils have discretion to introduce Additional HMO licensing schemes for smaller HMOs in part or all of their areas where specific conditions apply relating to how those properties are managed. Swansea has had an Additional HMO licensing scheme in the Castle and Uplands Wards since the legislation was introduced. This means that all HMOs in Castle and Uplands require licensing with a small number of legal exemptions.
- 2.3 The legislation governing HMO licensing, Housing Act 2004, states that a designation of an Additional HMO Licensing scheme will cease to have effect no later than five years after the date on which the designation comes in to force, if not revoked earlier. The current Additional HMO Licensing scheme came into force on 9<sup>th</sup> March 2016.
- 2.4 The National Assembly for Wales gave general approval on 13<sup>th</sup> March 2007 for designated areas made subject to additional licensing by the Council under the Housing Act 2004 (Additional HMO Licensing) (Wales) General Approval 2007. The designation of an Additional HMO Licensing scheme comes in to force on the date specified in the designation, which must be no earlier than three months after the date on which the designation is made.

## **3. The Proposed Policy**

- 3.1 The new Policy includes a number of changes including:
  - a) The designation of a new Additional HMO Licensing scheme covering Castle, Uplands and St Thomas Wards replacing the existing scheme covering Castle and Uplands Wards;
  - b) A restriction on the duration of a licence where planning permission is pending;
  - c) Changes to licence conditions regarding external appearance of properties, minimum energy efficiency standards, initial provision of refuse and recycling bags for new tenants, the introduction of a requirement for carbon monoxide alarms in living accommodation with appliances that

burn solid fuel, mains gas or LPG fuel and clarification on the limitations of the licence.

#### **4. Consultation**

4.1 Cabinet approved a draft HMO Licensing Policy for public consultation on 19<sup>th</sup> September 2019 (Appendix A). Public consultation ran from November 2019 until 19<sup>th</sup> February 2020. Key consultees were landlords and agents across the private rented sector in Swansea, Ward Members in Castle, Uplands and St Thomas, Swansea University, University of Wales Trinity St David's and both Student Unions, Citizens Advice Bureau, South Wales Police, Mid and West Wales Fire and Rescue Service and Swansea Law Society. A specific consultation page was set up on the Council's website and information was placed on the Rent Smart Wales website. Colleagues in Neath Port Talbot Council also assisted with promoting the consultation in their area. A dedicated e-mail address was set up for responses.

4.2 Nine responses were received and they are included in Appendix B. A response has been provided to each of the respondents.

4.3 The key points raised in the responses to the consultation were:

- a) Fees and costs of running the scheme
- b) Duplicity between HMO licensing and Rent Smart Wales requirements
- c) Comments on licence conditions
- d) Concerns about anti-social behaviour
- e) Licensing process and enforcement
- f) Need for additional licensing scheme.

#### **5. Response to Consultation**

5.1 All the points raised have been considered and are commented on here:

##### **a) Fees and costs of running the scheme**

The Council may fix a fee to an HMO licence application. The fee may only take into account the costs incurred in carrying out the licensing function. In 2011, a graduated fee structure was introduced reflecting the additional costs in licensing larger properties. There were mixed views that the current fees are too high or not high enough.

The fee will remain in the 2020 Policy, but will be reviewed prior to it taking effect in 2021. An Additional HMO Licensing scheme, which includes Castle, Uplands and St Thomas, would require an estimated two additional officers in Housing and Public Health. These would be funded from fee income.

A review of HMO licensing fees will also take account of additional inspections and proactive monitoring of compliance with licence conditions throughout the duration of a licence. Further assessment of resources will

be required, but additional new posts could then be funded from licence fees in order to carry out this work. Such posts would be in addition to those required for the extension of the Additional HMO Licensing scheme.

**b) Duplicity between HMO licensing and Rent Smart Wales requirements**

The respondent appeared to mix HMO licensing and Rent Smart Wales requirements. HMO licensing is dealt with under Housing Act 2004 and is entirely enforced by local housing authorities. Rent Smart Wales registration and licensing requirements were introduced by Housing (Wales) Act 2014. Cardiff Council, working as Rent Smart Wales, is the single licensing authority for Wales. Elements of enforcement are shared between the single licensing authority and local housing authorities by agreement and delegation of authority.

An HMO licence relates to a specific licence holder concerning a specific HMO. Each property requires a separate HMO licence. Anyone letting or managing a residential property in Wales let under a domestic tenancy requires a licence from Rent Smart Wales. This applies to properties let to single households as well as those let in multiple occupation. They do not require a separate licence for each property they let or manage. An HMO licence cannot replace a Rent Smart Wales licence and vice versa.

**c) Comments on licence conditions**

Some of the suggestions for changes to the licence conditions are outside the remit of the Housing Act 2004 and cannot be included as part of the HMO Licensing Policy. The legislation specifically prohibits licence conditions requiring any alteration in the terms of a tenancy under which any person occupies the house.

**d) Concerns about anti-social behaviour**

Some of the suggestions for changes are outside the remit of the Housing Act 2004. The Act does not apply to Police powers. Requirements for licence holders to carry out regular inspections of their properties to assess if there is evidence of anti-social behaviour has been included in the licence conditions along with recording details of complaints received and subsequent action taken.

**e) Licensing process and enforcement**

The Public Health Service is moving to a new software solution over the next six – 12 months, which will help to streamline the administrative process, although as there are legal requirements involved in the licensing procedure it will always require checks and balances. Enforcement must be proportionate and in accordance with the published policy. Public Health officers take a lot of informal action, which results in positive improvements, however a programme of increased inspections and monitoring is proposed, subject to Council's approval and being resourced by additional officers financed via the review of licensing fees as detailed in response a) above.

**f) Need for additional licensing scheme**

Two respondents commented that there was no need for additional HMO licensing, that the evidence base was weak and that there are already too many controls on landlords.

As outlined in the report to Cabinet on 19<sup>th</sup> September 2019, prior to designating an Additional HMO licensing scheme, the Council is legally required to carry out a thorough appraisal and consultation exercise with the relevant stakeholders. In particular, this would include

- Consult persons likely to be affected by the designation and consider any representations
- Consider that a significant proportion of the HMOs are being managed ineffectively so as to give rise to, or likely to give rise to, one or more particular problems either for those occupying the HMOs or for members of the public.
- As part of this have regard to the extent to which any code of practice approved under Section 233, Housing Act 2004 has been complied with by persons managing HMOs in the area (no such code of practice has been introduced either by central or Welsh government).
- Ensure that the introduction of additional licensing is consistent with the authority's overall housing strategy.
- Ensure that there is a co-ordinated approach in connection with homelessness, empty properties and anti-social behaviour.
- Consider whether there are any other courses of action available to the Council that might provide an effective method of dealing with the problem or problems in question.
- Consider that making the designation will significantly assist the Council in dealing with the problems in the area.

Further information to support the requirements for Additional HMO licensing have been included in the Policy, specifically in Parts 4 and 6. This Policy aligns with the authority's overall housing strategy and references are made to housing demand, a co-ordinated and targeted approach to issues and enforcement options. In limiting the Additional HMO licensing scheme to Castle, Uplands and St Thomas Wards, the Authority is able to focus activities in areas with the greatest need, dealing with problems specifically related to HMOs and the impact they have on those communities.

Whilst the focus is often on student properties, HMOs also provide a vital choice for many households in the private rented sector. This includes young professionals and, increasingly, people for whom single occupancy properties are no longer an option due to reductions in their finances for housing because of the introduction of Universal Credit. The Local Housing Market Assessment in 2013, updated in 2015 reported that HMOs make an important contribution to the private rented sector in Swansea.

Alongside general concerns about the impact HMOs may have on specific communities, particularly around the issues of waste and anti-social behaviour, Ward Members and residents had raised concerns over the increase in numbers of HMOs in St Thomas. This has been primarily since the development of Swansea University's Bay Campus in September 2015 and the subsequent development by the University of Wales Trinity St David's in SA1. Concerns mainly relate to the possibility of the breakdown of and impact on, the long-term community with higher numbers of transient HMO tenants. The report to Cabinet on 19<sup>th</sup> September 2019 outlined officers' response to these concerns and the Policy also includes reference to survey work, inspection of properties and complaints in the area.

The Housing (Wales) Act 2014 introduced new responsibilities for local authorities to help homeless people and those who are threatened with homelessness. This includes options for helping people find a new home in the private rented sector and HMOs continue to provide solutions for some of these situations. Public Health officers liaise closely with Housing Options colleagues where individuals are being referred to private rented HMOs and properties are inspected so as to check conditions. The introduction of additional licensing conditions assists in reducing any health and safety risks and applying management conditions.

Without an Additional HMO licensing scheme, the only way to check conditions and legal compliance with the wider housing legislation applicable to HMOs proactively would be to carry out a survey periodically. Such surveys are resource-intensive and would be difficult to do within existing resources as they take officers away from other statutory duties.

## **6. Next Steps and Timetable**

- 6.1 The National Assembly for Wales gave general approval on 13<sup>th</sup> March 2007 for designated areas made subject to additional licensing by the Council under the Housing Act 2004 (Additional HMO Licensing) (Wales) General Approval 2007. The Council approved its current Additional HMO Licensing scheme under this General Approval.
- 6.2 Subject to Council approval of the HMO Licensing Policy 2020, a new Additional HMO Licensing scheme for Castle, Uplands and St Thomas Wards will be designated to take effect from 15<sup>th</sup> February 2021. This scheme will be known as the Additional HMO Licensing (Castle, Uplands

and St Thomas) Scheme 2021 and will replace the existing Additional HMO Licensing (Castle and Uplands) Scheme 2016.

- 6.3 This Additional HMO Licensing scheme specifically applies to all HMOs, which do not come within the remit of mandatory licensing within the Castle, Uplands and St Thomas wards including HMOs defined under Section 257, Housing Act 2004 i.e. 'poorly converted' blocks of self-contained flats. The only exceptions to this will be those HMOs specifically excluded from licensing under relevant parts of the Housing Act 2004.
- 6.4 HMO licences issued under the previous Additional HMO Licensing scheme in the Castle and Uplands Wards will be pass ported through to the new scheme. Their expiry dates and licence conditions will not be altered by the new scheme, but on expiry, if the properties remain HMOs they will be subject to the requirements of the Additional HMO Licensing (Castle, Uplands and St Thomas) Scheme 2021.
- 6.5 The proposals will be aligned to the five ways of working of the Well-being of Future Generations (Wales) Act 2015.
- 6.6 The draft HMO Licensing Policy for 2020 is included as Appendix C to this report. The principal changes since the draft was put out for public consultation in November 2019 are summarised as follows:
  - Policy. **General updating** of contents page to include new Sections 3 and 4 and re-numbering of subsequent Sections.
  - Policy. Introduction. **General updating** of dates, statistics and re-numbering of some paragraphs due to moving information on importance of HMOs in the private rented sector to new Sections 2 and 3.
  - Policy. Removal of paragraph 1.11 introducing **Additional Licensing in St Thomas Ward** to Section 6.
  - Policy. Inclusion of new Section 3 to include information on **Swansea Population and Household Information**.
  - Policy. Inclusion of new Section 4 to reference **Local Housing Strategy 2015 – 2020** and role of HMOs in providing housing options in private rented sector, including some information previously included in Introduction.
  - Policy. Revision to Section 6 (previously Section 4) including new paragraphs 6.2 - 6.4 including references to **Corporate Plan 2018 – 2022 and Local Housing Strategy 2015 - 2020**.
  - Policy. Revision to paragraph 6.7 and 6.8 (previously 4.4 and 4.5) to **update statistics**.
  - Policy. Revision to paragraph 6.10 (previously 4.7) to **revoke Additional HMO Licensing scheme in Castle and Uplands and introduce new Additional HMO Licensing scheme in Castle, Uplands and St Thomas (Designation)**.
  - Policy. Revision to paragraph 7.4 (previously 5.4) to include **restriction on duration of licence** where planning permission is pending.

- Policy. Revision to paragraph 8.3 (previously 6.3) relating to **Public Protection Enforcement Policy**.
- Appendix D. Correction in condition 8 to numbering of condition relating to **written information about anti-social behaviour**.
- Appendix D. Simplification of condition 20 relating to **arrangements for dealing with false alarm of fire alarm system**.
- Appendix D. Amendment to condition 27 relating to **provision of carbon monoxide detector**.
- Appendix D. Amendment to section heading for conditions 29 – 32 relating to **Anti-social behaviour and Neighbourhood Cohesion**.
- Appendix D. Expansion of condition 30 relating to inspections to monitor **anti-social behaviour** and occupiers' compliance with relevant HMO Management Regulations.
- Appendix D. Amendment to condition 31 regarding **issues affecting neighbours**.
- Appendix D. Condition 42 now contains reference to **Rent Smart Wales**.

## 7. Equality and Engagement Implications

7.1 The Council is subject to the Public Sector Equality Duty (Wales) and must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

Our Equality Impact Assessment process ensures that we have paid due regard to the above.

7.2 The Equality Impact Assessment (EIA) process has been applied to the review of the policy.

7.3 An EIA Screening Form was completed prior to consultation and has been reviewed with the agreed outcome that a full EIA report was not required:

- The Policy will apply across the whole of Swansea and the application of Additional HMO licensing provisions is based upon specific legal requirements in the Housing Act rather than on any particular characteristic of individuals or groups within a community.
- Whilst landlords of licensable properties will have to apply for an HMO licence, which will incur a cost in paying the licence fee, this is set on a cost-recovery basis as required by statute. The Council has no control over whether any costs to landlords in the private rented sector are re-charged in some way to their tenants.



- The aims of the legislation relating to HMOs are based around improving housing conditions, which has a positive effect for tenants irrespective of any individual characteristics.

7.4 Information on the legislation relating to HMOs, including HMO licensing and the current Council's Policy is already available bilingually on the Council's website. The 2020 Policy, when adopted, will also be available in both English and Welsh. Landlords are able to make a licence application in either language. The Screening Form is included as Appendix D.

## **8. Financial Implications**

8.1 There are financial implications in carrying out the review of the existing HMO Licensing Policy, but as any Additional HMO licensing scheme can only run for a maximum of five years before being reviewed, these costs are already considered as part of the current HMO licensing fees.

8.2 Existing resources are not sufficient to deal with any extension of Additional HMO licensing and an increased number of compliance inspections. As detailed in this report, this will require extra staffing resources on a permanent basis, including professionally qualified Environmental Health Officers recruited from outside the local authority. The costs of new staff must be recovered from licence fees. Subject to the Policy being approved and new Additional HMO licensing scheme being approved, the current HMO licensing fees will be reviewed.

8.3 Only costs incurred in the licensing process can be recovered from HMO licence fees. Other costs including those of kerbside waste and recycling collections cannot be included.

## **9. Legal Implications**

9.1 The proposals in this report and any subsequent revisions to the Policy are in line with the Housing Act 2004 and subordinate regulations, Welsh Government guidance on Additional HMO Licensing Schemes. It will also allow the Council to meet its statutory duty in respect of the Housing Health and Safety Rating System.

9.2 The legal framework is set out in Parts 2 and 6 of this report.

9.3 The proposed designations for Additional Licensing will apply to all private rental HMO properties in the designated areas.

9.4 The National Assembly for Wales gave general approval on 13<sup>th</sup> March 2007 for designated areas made subject to additional licensing by local authorities in Wales under the Housing Act 2004 (Additional HMO Licensing) (Wales) General Approval 2007.

- 9.5 The proposed designations for Additional Licensing can be challenged by way of a Judicial Review if not done in accordance with The Housing Act 2004 and Regulations.
- 9.6 The power to recover expenses must be exercised in accordance with the express statutory power.

**Background Papers:** None

**Appendices:**

Appendix A: Link to Report of the Cabinet Member for Delivery to Cabinet, HMO Licensing Policy, 19<sup>th</sup> September 2019

<http://democracy.swansea.gov.uk/ieListDocuments.aspx?CId=124&MId=8583&Ver=4&LLL=0>

Appendix B: Comments from Consultation Respondents

Appendix C: HMO Licensing Policy 2020 and appendices.

Appendix D: EIA Screening