



## Report of the Cabinet Member for Corporate Service & Performance

Scrutiny Programme Committee– 14 February 2023

### Houses in Multiple Occupation

<b>Purpose</b>	To brief the Scrutiny Committee on the work of the Place Directorate with regards to Houses in Multiple Occupation (HMOs).
<b>Content</b>	The report sets out a description of the housing and planning roles and work with HMOs.
<b>Councillors are being asked to</b>	Consider the information provided and give views.
<b>Lead Councillor</b>	Councillor David Hopkins, Cabinet Member for Corporate Service & Performance.
<b>Lead Officer</b>	Paula Livingstone, Divisional Environmental Health Officer – Pollution Control and Private Sector Housing, Housing and Public Health and Ian Davies, Development Manager, Planning and City Regeneration.
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#### 1. Background

- 1.1 There are two service areas within the Directorate of Place with key statutory roles relating to Houses in Multiple Occupation (HMOs). Although the Committee has asked to review the work of the Housing and Public Health Service with regards to HMOs, and this report focuses on that aspect, it is important that the role of the Planning and City Regeneration Service is also covered with regards to planning policy to provide context for issues that cannot be dealt with by HMO licensing and housing legislation.
- 1.2 The Environmental Health and Housing team within the Pollution Control and Private Sector Housing Division's primary role is to implement the requirements of the Housing Act 2004 in relation to health and safety hazards and HMO licensing. The aim is to promote high standards across the HMO sector by

eliminating poor property conditions and management standards through education, regulation and enforcement.

- 1.3 The role of the Planning and Regeneration Service is to facilitate the delivery of high quality and resilient places that support well-being, prosperity and quality of life. This is achieved through the provision of a robust planning policy framework with sustainable development principles at its heart, which includes policies set out in the Council's adopted Local Development Plan (LDP) supported by Supplementary Planning Guidance (SPG). The Council is required to have full regard to this policy framework in the determination of any planning applications submitted for HMOs.
- 1.4 Both Service areas work with the public and property owners. Environmental Health and Housing deals with service requests from prospective landlords, contractors, agents, tenants, local residents, third sector organisations including Shelter Cymru and The Wallich, Mid and West Fire and Rescue Service, Rent Smart Wales and other Council teams including Housing Options, Finance, Legal, Waste Management, Building Control and Planning. The team is responsible for processing HMO licence applications, inspecting HMOs (both licensable and non-licensable), progress and management visits, investigation of complaints, advice and enforcement, including formal legal proceedings. There is a formal partnership working arrangement with South Wales Police, Swansea University and the University of Wales Trinity St David, who jointly contribute to fund a Community Liaison Officer, employed by Swansea University.
- 1.5 The Planning and Regeneration Service also engages with partner/stakeholder organisations e.g., infrastructure providers and Natural Resources Wales and Councillors to inform the formulation of planning policy and as part of determining planning applications. The engagement takes the form of both formal statutory and informal good practice engagement/consultation as appropriate.
- 1.6 The vast majority of both service areas' work is statutory. The definition of a house in multiple occupation in housing and planning legislation is not the same e.g., some buildings converted in to flats that do not comply with the Building Regulations 1991 will be considered as an HMO under housing legislation, but not planning legislation. The majority of purpose-built student accommodation managed by national management companies are not considered to be HMOs by virtue of a specific exemption in the Housing Act 2004. The Council has specific LDP policy and SPG relating to the development of such buildings. Housing and planning are two separate legislative regimes, which are not interdependent.
- 1.7 In November 2020, Council adopted the HMO Licensing Policy 2020, replacing the previous 2016 Policy. This renewed the Additional HMO Licensing Scheme in the Castle and Uplands electoral Wards for a further five years from 15<sup>th</sup> February 2021 and also extended the scheme into the St Thomas Ward. This followed concerns from Ward Members, local residents and an extensive survey, including visits to over 3,000 residential properties in the ward and detailed inspections of over 70 suspected HMOs to gather evidence to satisfy the legal requirements for the introduction of Additional HMO licensing in an area.

- 1.8 Council resolved in November 2022, an addendum to the Policy to reflect the change in Ward boundaries, which now includes the Waterfront Ward within the Additional HMO Licensing Scheme area. This means that all HMOs within these four wards, except those exempted by the relevant sections of The Housing Act 2004, require a licence. Licensing can control property condition, amenities and management arrangements, but does not control number of HMOs in Swansea.
- 1.9 On 30 January 2023, there were 1,672 licensed HMOs in Swansea.
- 1.10 The Swansea LDP was adopted in February 2019 following a public examination by independent inspectors appointed by the Welsh Government. The Plan contains a detailed policy on HMOs, which is supported by SPG that was adopted by the Council in December 2019.
- 1.11 The LDP can be downloaded from the Council's website <https://www.swansea.gov.uk/ldp>. A copy of the SPG and public consultation report setting out the process followed leading up to adoption of the final version of the SPG can be downloaded from the Council's website <https://www.swansea.gov.uk/spg>
- 1.12 The LDP policy and SPG seek to ensure that future HMO provision is managed sustainably in the interests of fostering cohesive communities, including by avoiding further instances of over-concentration of HMO properties to the detriment of residential amenity and community balance. The policy framework defines a 'HMO Management Area' where there are already high levels of HMOs, within which no more than 25% of residential properties are normally permitted to be HMOs. Outside these areas the limit is set at 10%. It also requires that development proposals do not 'sandwich' Class C3 dwellings between HMO properties either side.
- 1.13 The policy responds to Welsh Government requirements for Local Planning Authorities (LPA) to put in place robust local evidenced based policies in their LDP against which planning applications for HMOs can be assessed. The policy was informed by a set of evidence-based recommendations from a study that the Council commissioned from independent consultants.

## **2. Housing Powers**

- 2.1 The Housing Act 2004 introduced new definitions of an HMO, which widened the scope to include some poorly converted self-contained flats. A property is an HMO where three or more people forming more than one household share amenities, such as a kitchen or bathroom, occupy the house as their only or main residence and where rent is payable for their occupation.
- 2.2 Certain buildings are exempt from the definition and other related parts of the Act. These include certain buildings managed by a local council, housing association, police, fire or health authority, halls of residence that are managed by a university, buildings occupied by religious communities and buildings, predominantly owner-occupied, including resident landlords where the owner-

occupier occupies the building (or flat) with no more than two other persons (lodgers).

- 2.3 All HMOs that are three storeys or more with five or more occupiers must be licensed. This is a statutory requirement across Wales and is known as 'mandatory licensing'. Councils must license all HMOs meeting this criterion. Mandatory licensing applies to HMOs in all areas of Swansea.
- 2.4 The 'Additional' HMO licensing scheme operating in Uplands, Castle, St Thomas and Waterfront wards was adopted under discretionary powers available to the Council to license smaller HMOs not subject to mandatory licensing. Additional HMO licensing schemes need to meet criteria set down by UK and Welsh Government and may only be applied where a significant proportion of HMOs in the area are managed sufficiently ineffectively so as to give rise to particular problems for occupiers and members of the public.
- 2.5 There is no public consultation process as part of the consideration of an HMO licence process. In order to grant a licence, the Council must be satisfied that the property is (or can be made) reasonably suitable for occupation for the maximum number of occupants; the proposed licence holder and any manager is a fit and proper person; and that there are satisfactory management arrangements in place. Decisions relating to the refusal or revocation of a licence on grounds of fit and proper person status and satisfactory management arrangements are, in Swansea, delegated to Licensing Committee. The maximum length of a licence as laid down in the legislation is five years, after which a renewal application would be made.
- 2.6 The Housing Act 2004 lays down mandatory licence conditions relating to provision of annual gas safety certificates; safety of electrical appliances and furniture; provision and maintenance of smoke alarms; provision of written statement of terms for tenants. The HMO licensing policy includes an appendix of local licence conditions.
- 2.7 It is a legal requirement for the Council to make a public register of HMO licences available, which includes prescribed information. A 'compact' (with core property information) version of the register is available on the Council's website [HMO public register - Swansea](#)
- 2.8 The Housing Health and Safety Rating System (HHSRS) applies to all housing including HMOs irrespective of whether the property is licensable. It involves an assessment of the effect of housing conditions on the health of occupiers and an assessment of specific potential hazards. Enforcement action can be by a variety of notices and orders requiring a landlord to carry out work or to prohibit occupation of part or the whole of a property. Local authorities are required to assess licensable HMOs to ensure there are no functions under Part 1 of the Housing Act (HHSRS) that ought to be exercised by them. This has to be done within five years of a licence being issued and in practice this requires an inspection to be carried out, which is normally done during the licence application process.

- 2.9 Both licensable HMOs and those that fall outside the licensing requirements are subject to one of two sets of Management Regulations, which impose certain duties on managers including the maintenance of fixtures and fittings, fire safety measures, gas and electricity supplies and waste disposal arrangements. The Regulations also impose duties on occupiers to act in accordance with reasonable instructions given by the manager of the property.
- 2.10 It is an offence to fail to comply with a statutory notice, order, Management Regulations or licence conditions. It is an offence to operate a licensable HMO without a licence or to let an HMO to more than the maximum number of occupiers specified in a licence. Legal proceedings can include Simple (formal) caution or prosecution. Prosecutions are taken in the Magistrates Court. Appeals against notices, orders and licence decisions are heard by the Residential Property Tribunal Wales.

### **3. Planning Context**

- 3.1 The adoption of the HMO policy in the LDP together with the supporting SPG provides a sound evidence base on which applications for planning permission for HMOs can be determined. Prior to adoption, there was limited evidence available on which to make informed planning decisions. This is reflected in the local authority's record of success in relation to appeals against the Council's decision to refuse planning applications for HMOs. In the three years prior to adoption of the LDP, 16 appeals were determined against the Council's decision to refuse planning permission for a HMO. Of these 16 appeals, 13 were allowed (81%).
- 3.2 In the first 12 months following adoption of the LDP, the situation did not improve significantly. Of 10 appeals submitted, eight were allowed (80%). It was clear in the appeal decisions that Inspectors were of the view that despite breaches of the threshold set out in policy, there was insufficient evidence of any harm being caused. Officers considered that the harm had been identified as part of the evidence produced LDP Inquiry process, which had resulted in the policy being accepted and needed. It was not considered that this evidence had to be reproduced for every planning application/appeal. Consequently, Senior Managers within Development Management met with the then Chief Inspector to discuss the approach being taken by appeal Inspectors.
- 3.3 Following that meeting, it was agreed that it was not necessary for the evidence to be produced for every appeal. It was accepted that the policy was adopted because evidence demonstrated it was necessary to have such a policy. In the last three years, 11 appeals have been determined following the Council's decision to refuse planning permission for an HMO. Of these, only two have been allowed (18%) which demonstrates that the policy is working.
- 3.4 Another measure of the success of the policy is in the number of planning applications submitted for HMOs. In the three years prior to adoption of the policy, approximately 250 planning applications were submitted. In the three-year period since adoption of the policy, approximately 165 applications were submitted. This reduction of 35% in the number of HMO applications submitted suggests that prospective applicants are aware of the policy and the control

exercised through the policy. As a result, they are less likely to seek planning permission for HMOs where policy indicates they will not be permitted.

#### **4. Stakeholders**

- 4.1 Prior to adoption, the HMO Licensing Policy goes through a public consultation process. Key consultees are landlords and agents across the private rented sector, residents' groups, Citizens Advice Bureau, Mid and West Fire and Rescue Service and South Wales Police. The consultation is open to the public via the Council's website. Views and feedback are always mixed from those believing that controls are not strict enough and fees are too low, to those with completely opposite views.
- 4.2 Since 2013, the Council has been active in a specific partnership arrangement with Swansea University, South Wales Police and the University of Wales Trinity St David. All partners contribute financially to the salary of a Community Liaison Officer (CLO) employed by Swansea University, but who works with students of either educational establishment, both on campus and in private accommodation in residential areas. This partnership and particularly the work of the CLO in working alongside students and members of local communities, has helped in creating more cohesive communities, dealing with specific issues when they arise and being a catalyst for students to become actively engaged in the communities in which they live.

#### **5. Finance Implications**

- 5.1 The Council may fix a fee to an HMO licence application. The fee may only take into account the costs in carrying out the licensing function. The current fee structure was introduced in June 2022, replacing the fee structure that was introduced in April 2021. Case law has determined that there must be a two-part fee based on determination of application and then post-application work including enforcement. However, there is also a reduced fee option for applicants paying the whole fee as one payment with their licence application as this is a simpler administrative process. Over 98% of applicants take this single payment option. Fees are based on the maximum number of occupiers in the property starting at £954 (single payment) for a new licence for an HMO with three occupiers and increasing by £75 per occupier. Details are on the Council's website [Fees for houses in multiple occupation licences - Swansea](#)
- 5.2 The fee structure will be reviewed for the 2023 – 2024 financial year and will reflect changes to staffing costs.
- 5.3 As licences are granted for up to five years, fee income must be considered as receipts in advance under the Council's financial accounting procedures. Following these procedures, HMO licence fee income was £254k in 2019 – 2020, £297k in 2020 – 2021 and £350k in 2021 – 2022.

## 6. Current Performance and Trends

- 6.1 The total number of HMOs in Swansea is estimated to be approximately 2,200, with around 1,800 of those estimated to be in the Uplands and Castle Wards. There is no single indicator of the number of HMOs in Swansea: since February 2016 with the amendments to the Use Classes Order, planning permission has been required for all properties being used as HMOs, but this does not apply retrospectively; non-licensable HMOs do not have to be registered; HMOs do not have to be recorded for Council Tax records, although there is an exemption class for any properties, not necessarily HMOs, that are occupied solely by students and although landlords of rental properties where occupiers are given a 'domestic tenancy' have to register with Rent Smart Wales, this excludes residential landlords and properties let on a licence occupation contract e.g. asylum seeker properties and those let via a university.
- 6.2 The number of HMOs fluctuates throughout the year and from year to year reflecting the number of property sales, change of use of properties and licence renewals as dictated by the local market. However, the overall number of licensed HMOs has remained fairly consistent for the last few years, allowing for the increase due to the introduction of additional HMO licensing in the St Thomas Ward. The detail below gives an indication of the number and geographical distribution of HMOs across the city for licensed HMOs.

There were 1,672 licensed HMOs on 30 January 2023: 712 under the mandatory licensing provision and 960 under the additional licensing scheme. These were in the following wards:

Ward	Number of licensed HMOs
Castle	453
Landore	2
St Thomas	101
Sketty	12
Townhill	1
Uplands	1,077
Waterfront	24
Mumbles	2

- 6.3 The majority of licensed HMOs have between four and six occupiers.

Max number of occupiers	Number of licensed HMOs
3	79
4	361
5	543
6	371
7	150
8	94
9	33
10	19
11	10
12	2
13	2

14	1
15	1
16	1
17	1
19	2
21	1
62	1

- 6.4 The Covid-19 pandemic severely impacted the work of the Environmental Health and Housing team with regards to inspecting any occupied properties, particularly multi-occupied properties, due to Welsh Government health protection regulations and corporate health and safety risk assessments. Working practices were adjusted to allow landlords to submit licence applications by e-mail and to pay fees by telephone rather than by post and cheque. During this period, licences were granted following a desk-top assessment of an application and review of previous history of a property and applicant, with the usual licensing/HHSRS inspection being postponed. This meant that 306 licences could still be grant during this time with the standard licence conditions being applied rather than any property-specific conditions. 81 of these properties are yet to be inspected, but the aim is to complete these inspections by May 2023, still within the regulation five-year period.
- 6.5 As Environmental Health Officers, the majority of the team were working to support care homes, as part of the regional Test Trace Protect team and in an enforcement role with the Health Protection Regulations from March 2020. In particular, the role in the regional Test Trace Protect team working in partnership with Neath Port Talbot Council, Bro Morgannwg NHS Trust, and Public Health Wales, meant that officers were away from their normal housing duties for several months. Although attempts were made to procure temporary additional staffing resources into the team, Environmental Health Officers were in high demand and short supply across the profession as a whole in Wales and the other nations across the UK. One officer in the team has also been on maternity leave since April 2022.
- 6.6 There was a change in queries from tenants, landlords and agents across the private rented sector with regards to what they were allowed to do during the pandemic: how property viewings and building maintenance could take place, how possession proceedings had changed, and what isolation rules meant for them. Officers in the team deal with a range of housing and public health matters, not just HMOs, and priorities had to be adjusted to respond to this service demand. The HMO Advisory Service for prospective HMO landlords has been suspended in order to focus on licence applications and inspections.
- 6.7 As a result, there is still a delay in processing applications for HMO licences but as our recovery programme progresses, waiting times for inspections have reduced from the six – seven months that occurred during the pandemic with applicants now waiting approximately four months for an inspection of their property.



- 6.8 In the past year, officers in the Environmental Health and Housing team have been involved in the Council's response to providing a safe place to live for Ukrainian refugees. 192 properties offered by sponsors in Swansea have been visited to ensure the absence of any Category 1 hazards (the most serious category of hazard) under HHSRS. This work, although necessary, has reduced the capacity to deal with HMOs.
- 6.9 An indication of the work of the Environmental Health and Housing team with regards to HMOs since January 2019 is shown below (all figures recorded as of 30 January 2023).

	2019	2020	2021	2022	2023
HMO licence applications received	331	473	558	413	25
HMO licences granted	345	323	434	475	33
HMO licences revoked <sup>1</sup>	83	52	68	98	4
HHSRS enforcement notices/ orders	12	4	8	9	2
Service requests (enquiries & complaints) received excluding licence applications <sup>2</sup>	1,304	1,043	1,068	947	89

- 6.10 There are currently 202 licence applications being processed, either at the initial stages of checking applications, following-up on incomplete applications, awaiting fee payment or where complete applications have been received and are then awaiting inspection before licence is granted.
- 6.11 There have been no prosecutions for HMO offences since 2018. Prosecutions can be time-consuming and resource intensive. Priorities in recent years have been to deal with HMO licence applications to ensure that properties pose minimal health and safety risk to occupiers and that licence holders are aware of and covered by licence conditions. The response from landlords is generally good. However, where there is sound evidence and the burden of proof and public interest test for prosecution are satisfied, this will be considered. Three landlords were issued with Simple cautions for failure to license an HMO in 2019

<sup>1</sup> Revocations mainly due to property sales or death of licence holder. Housing Act 2004 prohibits transfer of licence from one person to another.

<sup>2</sup> Relates to enquiries about licensing process or general HMO requirements, complaints about property condition from occupier or neighbour, FOI requests and requests for public register and variations to HMO licences.

and in 2022 Licensing Committee were asked to consider the fitness and propriety of a licence applicant.

## **7. Future Challenges & Opportunities**

- 7.1 As explained in Section 6 above, the effect of the Covid-19 pandemic is still having an impact with regards to work demand. The delays created, although reducing, are likely to continue for the next 18 – 24 months. This level of demand also means that proactive work, including introducing a management inspection programme of HMOs during the term of a licence, has been delayed. Opportunities to introduce such a programme will be kept under review.
- 7.2 There will be staffing changes in the Pollution Control and Private Sector Housing Division this year. The Divisional Officer will be retiring, which, whilst providing career opportunities for other officers in the Division, will mean that some individuals will be shouldering new responsibilities, and a period of adjustment will be required. These new responsibilities will include the review of the current HMO Licensing Policy that will be carried out before the Additional HMO Licensing Scheme ends in February 2026. A review of the Policy will be based on evidence gathered and an extensive public consultation in 2024 in to 2025 before a revised Policy will be reported to Council in the second half of 2025.
- 7.3 HMO licensing is a prescriptive and administrative-heavy process. Our ICT resources do not currently allow applications to be made online. Investing in modern technology that would allow this, including fee payments, would be costly initially, but could then free-up officer time to concentrate on inspecting properties and monitoring licence conditions.
- 7.4 The Housing Act 2004 requires HMO licence fees to be set on a cost-recovery basis relating to work involved in the HMO licensing function only. There is a balance to be struck between what is reasonable and what could be considered to be excessive for some landlords.
- 7.5 Nationally, there is a huge demand for housing in both the private and social rented sectors. There are around 7,000 people on the waiting list for council housing in Swansea. Around 60% of HMOs in Swansea are occupied by students, but HMO accommodation provides an important source of affordable housing for people across our communities. Availability of purpose-built student accommodation is increasing, which may take some students away from HMOs, but both Swansea University and the University of Wales Trinity St David have stated aims to increase student numbers in their establishments. Anecdotally, increasing costs for landlords, including increasing fuel bills, along with new legislation such as Renting Homes (Wales) Act 2016, restrictions on letting fees and the proposed changes to the increase in the minimum energy performance of a rental property from an EPC of E to C from 31 December 2025, will see some landlords sell their properties and come out of the market. This would affect the wider rental sector, not just HMOs.

## 8. Integrated Assessment Implications

8.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, 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 Acts.
- 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.
- Deliver better outcomes for those people who experience socio-economic disadvantage.
- Consider opportunities for people to use the Welsh language.
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

8.1.1 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

8.1.2 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

8.2 There are no implications with regards to this report, which is for information and therefore an IIA screening form has not been completed.

### Glossary of terms:

HMO – House in Multiple Occupation

LDP – Local Development Plan

LPA – Local Planning Authority

SPG – Supplementary Planning Guidance

HHSRS – Housing Health and Safety Rating System

CLO – Community Liaison Officer

### Background papers:

HMO Licensing Policy 2020 [Licensing of houses in multiple occupation - Swansea](#)

HMO Licence fee schedule [Fees for houses in multiple occupation licences - Swansea](#)

Public register of licensed HMOs [HMO public register - Swansea](#)

Local Development Plan for Swansea 2010 – 2025 [Swansea Local Development Plan 2010-2025 \(LDP\) - Swansea](#) .

**Appendices:** None