



Report of the Cabinet Member for Delivery

Cabinet – 19 September 2019

HMO Licensing Policy 2020

Purpose:	To review HMO licensing in Swansea, including application of Additional licensing.
Policy Framework:	HMO Licensing Policy
Consultation:	Access to Services, Finance, Legal.
Recommendation(s):	It is recommended that: 1) Public consultation takes place on a draft HMO Licensing Policy for 2020 including an Additional HMO licensing scheme in the Castle, Uplands and St Thomas Wards. 2) The results of the consultation are subsequently reported back to Council for adoption of a new Licensing Policy 2020.
Report Author:	Paula Livingstone
Finance Officer:	Aimee Dyer
Legal Officer:	Lyndsay Thomas
Access to Services Officer:	Catherine Window

1. Introduction

- 1.1 The Houses in Multiple Occupation (HMO) Licensing Policy 2016 lays out Council's approach to HMOs across the whole authority area. It also includes an Additional HMO licensing scheme for the Castle and Uplands Wards. Legally this Additional scheme must be reviewed and re-designated, if appropriate, within a five-year period.
- 1.2 This report outlines the legal framework and options for control of HMOs within a changing landscape across the private rented sector and describes a policy review.

2. Legal Framework

- 2.1 Management Regulations apply to all HMOs, irrespective of whether the property is licensable and impose certain duties on managers including the maintenance of fixtures and fittings, fire safety measures, gas and electricity supplies and waste disposal arrangements. There is no provision for service of enforcement notices within the Regulations. Breaches of the Regulations are dealt with via prosecution.
- 2.2 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 is the legal tool on which enforcement is based. Enforcement action is 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.
- 2.3 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.
- 2.4 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 in 2006. This means that all HMOs in Castle and Uplands require licensing with a small number of legal exemptions.
- 2.5 A landlord does not have to wait for a licence to be granted before being able to let the property. Once an application for a licence has been made, a landlord can let an HMO, but must comply with licence conditions once a licence is granted. Conditions may require work to be carried out to improve facilities or conditions within the property within a specific time, which will relate to the work required at each individual property.
- 2.6 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. Prosecutions are taken in the Magistrates Court.
- 2.7 The Housing (Wales) Act 2014 introduced mandatory registration for landlords and licensing for agents and self-managing landlords for a range of rental properties across Wales, including HMOs. This is in addition to HMO licensing. The Rent Smart Wales scheme replaced the previous voluntary Landlord Accreditation Wales scheme. Rent Smart Wales licences are linked to mandatory training for landlords and agents and compliance with a code of conduct. They are not property based. Whilst administered by a single licensing authority for the whole of

Wales, local councils share some enforcement powers with Rent Smart Wales.

3. Additional HMO Licensing

3.1 The aim of additional HMO licensing is to improve the management standards and conditions in HMOs in an area. It does not control numbers of HMOs.

3.2 Prior to designating an additional 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.

4. Recent Changes to Housing Legislation in England

4.1 Central Government introduced changes to legislation in England in 2018 that extended the remit of mandatory HMO licensing to include HMOs with five occupiers irrespective of the number of storeys of the property. Minimum room sizes for licensed HMOs have been introduced and new powers have been given to local authorities to levy financial penalties for failure to comply, the money then having to be used for housing functions within the local authority.

- 4.2 A scoping exercise on a review of HHSRS has also recently taken place in England, which has recommended that further guidance be given to landlords and local authorities on its application in order to increase understanding and add consistency of application.
- 4.3 Welsh Government has made initial steps to consult with local authorities via the All-Wales Private Sector Housing Expert Panel on whether similar changes would be welcomed in Wales. Members have a role in lobbying for the introduction of extended powers and controls over HMOs as in England should they decide that is appropriate.

5. Planning Controls

- 5.1 The LDP includes new provisions for HMOs and Purpose Built Student Accommodation and includes considerations for density and concentration of HMOs. Planning legislation is separate from housing law and cannot be taken into consideration when considering HMO licensing.

6. Local Context and St Thomas

- 6.1 There are approximately 2,200 HMOs across Swansea, mainly located in Castle, Uplands, and St Thomas Wards. At the beginning of August 2019, there were 1,758 licensed HMOs.
- 6.2 HMOs are not only occupied by students, but 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.
- 6.3 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 have raised concerns over the potential increase in numbers of HMOs in St Thomas. This has primarily been 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.
- 6.4 These concerns were investigated by a Scrutiny Working Group at meetings in November 2016 and January 2017.
- 6.5 As a result, a survey was carried out in March 2017 to identify HMOs in St Thomas. Officers in Housing and Public Health visited approximately 3,100 residential properties. This suggested that 107 of those were HMOs and 11 of those were already licensed under mandatory HMO licensing requirements. No further licensable properties were identified.

6.6 Further investigations were made using existing records and details from Council Tax and Planning records and 99 properties were inspected using existing Housing Act powers. 71 properties were found to be existing or proposed HMOs.

7. Considerations

7.1 If Council wishes to designate an Additional licensing scheme in the St Thomas ward, it would be preferable, in operational terms, for it to run concurrently with the existing scheme in Castle and Uplands. This would require consultation on renewing the existing scheme at the same time and would form part of the required review of the HMO Licensing Policy.

7.2 All HMOs in Castle and Uplands (with the exception of those with more than 10 occupiers, which are managed by a university that are legally exempt from licensing) require licensing under the Additional scheme and it is proposed that the same requirements would apply in St Thomas. Additional licensing schemes apply to existing HMOs as well as properties, which become multi-occupied after a scheme is declared.

7.3 Where HMO licensing schemes apply, a local authority can levy a fee, set on a cost-recovery basis, relating to their costs incurred regarding the licensing requirements. An Additional scheme in St Thomas would require an estimated two additional officers in Housing and Public Health. These would be funded from fee income.

7.4 A local authority has a statutory duty to carry out an HHSRS inspection once during the span of an HMO licence (the statutory maximum duration of an HMO licence is five years). That inspection is currently made at the start of the licensing process. Concerns about the frequency of inspections to check compliance with licence conditions in existing licensed HMOs, irrespective of location, have been expressed by Members, residents and some landlords. A review of HMO licensing fees could take account of additional inspections and more proactive monitoring of compliance with licence conditions. Further assessment of resources would 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 an Additional licensing scheme in St Thomas.

7.5 It is expected that the planning controls introduced under the LDP and subsequent Supplementary Planning Guidance (SPG) will control numbers of HMOs and slow the increase of newly converted properties, however these controls would not directly affect the condition of HMOs and the effect on tenants. Without an Additional HMO licensing scheme, the only way to check conditions and legal compliance proactively would be to carry out a survey periodically.

7.6 Such surveys are resource-intensive and would be difficult to do within existing resources as they take officers away from other statutory duties.

8. Next Steps

- 8.1 The inspection of properties in St Thomas did not identify any unlicensed HMOs under the mandatory licensing regime. However, around 60 properties were identified as HMOs, which do not currently require licensing, but would under an Additional licensing scheme. The evidence base for poor management of HMOs is open to interpretation and there is no threshold for poor management laid down in legislation. This means there is a risk of challenge to the declaration of an Additional licensing scheme in St Thomas. The consultation required prior to any designation allows opportunity for all stakeholders to express their views
- 8.2 Additional HMO licensing in Castle and Uplands has been successful, with an increase in the number of compliant properties since the first scheme was introduced in 2006. However, there are recurring issues in a relatively small number of properties that a re-designation of an Additional HMO licensing scheme in the Wards with additional resources could help to address, particularly around the issues of property management.
- 8.3 In the case of HMOs occupied by students, our continued partnership work with both universities and South Wales Police, which includes contributing towards the salary costs of the Community Liaison Officer employed by Swansea University, will help to identify HMOs and deal with resident issues in the most appropriate way.
- 8.4 Given the location of St Thomas bordering with Neath Port Talbot and the Bay Campus location in Neath Port Talbot it is proposed that there should be consultation with existing and potential landlords across the two councils. Consultation will take place over a 10 week period.
- 8.5 Any new or renewed additional licensing scheme is subject to designation by Council and a new HMO Licensing Policy would be reported to Council after the completion of consultation and consideration of responses. There is a legal requirement for the local authority to give at least three months' notice of the designation of an Additional HMO licensing scheme before the date at which it comes in to force.
- 8.6 The proposals will be aligned to the five ways of working of the Well-being of Future Generations (Wales) Act 2015.
- 8.7 A draft HMO Licensing Policy for 2020 is included as Appendix A to this report. A review of the 2016 Policy and its appendices has been completed. The principal changes are summarised as follows:
- Policy. **General updating** of Council name, document dates and contents page to include appendix F.
 - Policy. Introduction. **General updating** of dates, statistics and reference to importance of HMOs in the private rented sector and re-numbering of some paras.

- Policy. Expansion of para 1.7 to 1.7 – 1.9 to provide more detail on **HMO occupancy**.
- Policy. Revisions to para 1.8 (now 1.10) to refer to **HMOs in St Thomas**.
- Policy. New para 1.11 to introduce **Additional Licensing in St Thomas Ward**.
- Policy. Revision to para 3.3 for clarification on **properties occupied as flats**.
- Policy. Revisions to para 4.2 and new para 4.3 to refer to **survey of properties** in St Thomas.
- Policy. New para 4.4 to refer to **complaint statistics** in Castle, Uplands and St Thomas.
- Policy. New para 4.5 to refer to **enforcement activity** in Castle, Uplands and St Thomas.
- Policy. Revisions to 4.7 to refer to **types of HMOs** to be included in Additional HMO licensing scheme.
- Policy. Revisions to para 6.4 to take account of the introduction of **Rent Smart Wales**.
- Policy. Revisions to para 6.8 and 6.9 relating to **fines**.
- Appendix A. **Amenity Standards**. Updating to Council and team names only.
- Appendix B. **Means of Escape – Fire Precautions**. Updating to Council names and reference only.
- Appendix C. Criteria for **Fit and Proper Persons**. No change.
- Appendix D. **Changes in circumstances** to be notified to the Council in writing within 14 days not seven to allow reasonable time for licence holders.
- Appendix D. New condition 6 stipulating the Council can **vary or revoke the licence** if the property is no longer suitable, management arrangements are no longer satisfactory, or that the licence holder/manager are no longer 'fit and proper'.
- Appendix D. Condition 12 (now 13). Addition of specific condition relating to **decorative condition** of the external appearance of the property.
- Appendix D. New condition 16 relating to provision of **adequate space heating** in each unit of living accommodation.
- Appendix D. New condition 17 relating to the minimum **energy performance standard** requirements.
- Appendix D. Condition 16 (now 19). Clarification of servicing requirements for **fire alarms**.
- Appendix D. Condition 18 (now 21). Simplification of wording regarding notification of **fire incidents** to the Council.
- Appendix D. Inclusion of reference to **carbon monoxide** in the 'Gas, Electrics and Furniture' section and reorganisation of paragraphs to aid ease of reference.
- Appendix D. New condition 27 requiring provision of **carbon monoxide alarms**.
- Appendix D. New condition 30 requiring regular documented inspection of the property regarding evidence of **anti-social behaviour**.
- Appendix D. New condition 32 regarding **reporting of criminal activity** at the property.

- Appendix D. Condition 27 (now conditions 33 and 34) expanding the requirements, both inside and outside the property, for the **management of waste**.
- Appendix D. New condition 45 regarding **retention of documents** relating to the licence conditions.
- Inclusion of '**Limitations of the Licence**' section beneath condition 45.
- Appendix E. Updated **map** of Castle and Uplands Electoral Divisions.
- Appendix F. Insertion of **map** of St Thomas Electoral Division.

9. Equality and Engagement Implications

9.1 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.

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

9.3 An EIA Screening Form has been completed 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.

9.4 Information on the legislation relating to HMOs, including HMO licensing and the Council's Policy is already available bilingually on the Council's website. The consultation process will be available in the same way and comments and correspondence will continue to be dealt with bilingually as required, with both the draft and final Policy, when adopted, being available in both English and Welsh. Landlords are able to make a licence application in either language.

10. Financial Implications

- 10.1 There are financial implications in carrying out the review of the existing HMO Licensing Policy and consultation on proposed changes, 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.
- 10.2 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.
- 10.3 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.

11. Legal Implications

- 11.1 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.
- 11.2 The legal framework is set out in Parts 2 and 3 of this report.
- 11.3 The proposed designations for Additional Licensing will apply to all private rental HMO properties in the designated areas.
- 11.5 Any statutory consultation requirement requires a draft proposal identifying what is to be designated and its consequences.
- 11.4 The National Assembly for Wales gave general approval on 14th 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.
- 11.5 The proposed designations for Additional Licensing can be challenged by way of a Judicial Review.
- 11.6 The power to recover expenses must be exercised in accordance with the express statutory power.

Background Papers: None

Appendix: Appendix 1 - Draft HMO Licensing Policy 2020